

Diamond Walnut Growers, Inc.

and

The California Walnut Industry

A Report Prepared for

Cannery Workers Union, Local 601

by

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## Diamond Walnut Growers, Inc.

### Organizational Structure

Diamond Walnut Growers, Inc., is a corporation organized as an agricultural producer cooperative association and is incorporated in California under Section 12201 of the Corporation Code. Such a cooperative, under both California and U.S. law, is eligible to be granted tax-exempt status. Also, all types of cooperatives are organized under the principle of one-person, one-vote. Thus, the company differs from private, for-profit corporations in two important respects.

First, the company's income is not ordinarily subject to corporate income tax, either Federal or State, so long as the company's net income (profit) is distributed to the association's members. Each member reports his or her proceeds as ordinary income on their personal or business income tax return. To understand the great significance of this privileged tax treatment, we refer below to the 1990 Diamond Walnut Growers, Inc. financial record and contrast it with the Dole Food Company financial record for the same year. Dole, of course, is a private, for-profit corporation subject to corporate income tax.

### Diamond Walnut Growers, Inc.

Net Sales & other revenue	\$167,510,000
Expenses & Cost of raw product	\$155,917,000
Proceeds before income taxes	\$12,944,000
Income taxes	0
Net income	\$12,944,000

Dole Food Company

Net Sales & other revenue	\$3,003,213,000
Costs & Expenses	\$2,814,958,000
Proceeds before income taxes	\$188,255,000
Income taxes	\$67,800,000
Net income	\$120,455,000

Thus, the favorable tax treatment enjoyed by Diamond Walnut Growers, Inc., as an agricultural production cooperative, saves the members a very considerable tax expense, amounting to 1/3, or more, of the company's annual net income.

The second major difference between Diamond Walnut's corporate structure and that of private, for-profit corporations is that each member of the Diamond Walnut association has one vote on all issues determined by vote of the members, no matter how large or small their volume of walnut production. In the world of private corporations this one-member, one-vote rule is exceptional, although it is required by law for cooperative associations such as Diamond Walnut. By contrast, in a private, for-profit corporation the number of votes is determined by the number of shares of stock owned. For example, in the case of Dole Food Company, David Murdock owns 13,630,000 shares of stock and has that many votes. If an individual were to buy one share of stock of Dole Food Company then he or she would have just one vote as compared with Murdock's 13,620,000.

Diamond Walnut Growers, Inc., is also a member cooperative of Sun-Diamond Growers of California, an agricultural producer

cooperative association composed of five organizations, each of which, like Diamond Walnut, is an agricultural cooperative association. The five member coops are listed below. This type of structure, a "cooperative of cooperatives," is authorized under Section 12202 of the California Corporation Code.

Sun-Diamond Growers of California

Diamond Walnut Growers, Inc.  
Hazelnut Growers of Oregon  
Sun-Maid Growers of California  
Sunsweet Growers Inc.  
Valley Fig Growers

Sun-Diamond's real purpose is to provide coordinated sales representation, accounts receivable and certain other services for all five member coops. By coordinating the marketing of raisins, figs, walnuts, prunes and hazelnuts, the five coops can make more efficient use of their sales resources. A second feature of Sun-Diamond is its ability to provide economies of scale for certain other services, such as equipment leasing, to all of the member coops at a lower overhead cost than would be the case if each coop individually negotiated lease agreements. As will be evident later in this report, Sun-Diamond also assists with financing.

Diamond Walnut currently has approximately 2,200 members. This represents a decline of about 500 growers from the 2,700 reported in 1985. Each member must be a producer of walnuts and must agree, as a condition of membership, to market all of their walnuts through the cooperative. Membership is open to any walnut grower in the state. A copy of the coop's membership agreement is shown in Appendix I of this report.

The company is governed by a sixteen person Board of Directors which has sole authority to set policy and to hire and fire management. The association's By-Laws stipulate that only members are eligible to become Directors and that Directors are elected by vote of the membership. The association also has three non-voting Advisory Directors.

The decision-making structure of the association is organized such that individual members are assigned to one of three geographic districts. District I is further sub-divided into three sub-districts and District III is further sub-divided into two sub-districts. Members in each district elect a District Board of Directors through a democratic, secret-ballot election process. Elections are held in the Spring of each calendar year. Each District's Board of Directors then elects a specified number of persons from among its membership to serve on the Diamond Walnut Growers, Inc., Board of Directors. The Districts and Sub-Districts are identified in Table I along with the number of members of the Board of Directors of Diamond Walnut elected from each District.

The different number of directors from three districts is intended to give greater representation to districts with larger numbers of members and with a greater proportion of state walnut production.

Despite the formal democratic structure, Diamond Walnut's Board of Directors is dominated by larger walnut producers. On a statewide basis the average walnut grower has just 28 acres of walnuts. Only one member of Diamond Walnut's board has a holding

as small as that. Using Diamond Walnut's claim to 50% of the state's production and its membership 2,200 growers, the average Diamond Walnut member has an estimated 41 acres of walnuts. In contrast to this figure, the members of the Diamond Walnut Board of Directors farms an average of 410.5 acres of walnuts, ten times larger than their association's member-wide average. And only one member of the Board of Directors of Diamond Walnut has a walnut farm with an acreage smaller than 41 acres.

Table I

Districts and Sub-Districts, Diamond Walnut

District I Four directors of Diamond Walnut

District I-A Southern California Coast

District I-B Southern San Joaquin Valley

District I-C Central California Coast

District II Six directors of Diamond Walnut

District II-A Northern San Joaquin Valley

District III Six directors of Diamond Walnut

District III-A Sacramento Valley

District III-B Northern California Coast

The Board of Directors, with their mailing address, business telephone number and walnut acreage are shown in Table II. District Board members are shown in Appendix II. Of the sixteen members, one is a nursery operators and not a direct producer, one is a manager of a large walnut farm (and is an agent for the farm), one is a non-farming partner in an orchard, and the remaining thirteen are all farm operators in their own right. Thus, the

great majority of the members are currently active walnut farmers. It is not known whether the views of the Board accurately reflect the views of the majority of members of the coop. It is likely that persons who are elected to the Board of Directors are individuals who take an active interest in the coop.

**Table II**  
**Diamond Walnut Growers, Inc.**

Board of Directors

William C. Hosie, Chairman P.O. Box 226, Stockton, CA 95236 (209) 887-3212	320 acres
Robert Driver, Driver Nursery 2737 North Avenue, Modesto, CA 95351 (209) 523-2811	-
James Edwards, Edwards Farms 23544 S. Banta Road, Tracy, CA 95376 (209) 835-1845	292
Henry Eilers, Henry Eilers Ranch Co. 16657 E. Milton Road, Linden, CA 95236 (209) 462-6713	264
John Gilbert, Gilbert Orchards 4177 Wheatland Road, Wheatland, CA 95692 (916) 633-4146	454
Charles Gordon, Jr., Gordon Farms, Inc. Star Route Box 38, Brooks, CA 95606 (916) 796-3188	273
Robert J. Graves 30535 Road 180, Visalia, CA 93291	68
James C. Hamilton, Hamilton Ranches 31807 Road 160, Visalia, CA 93291 (209) 798-1161	26
Joseph P. Hughes P.O. Box 211, Gridley, CA 95948 (916) 695-1638	unknown
Marie Long, Partner, MAPCO Farms P.O. Box 179, Chico, CA 95927 (916) 891-6166 Residence address: Pasadena	250
Earl Perez, Perez Ranches Inc. P.O. Box 97, Crows Landing, CA 95313 (209) 838-3838	546
John Repanich 25611 Ohio Avenue, Corning, CA 96021 (916) 824-2752	212

Robert M. Sorensen 3836 Paradise Road, Modesto, CA 95351 (209) 524-0833	56
Joseph B. Summers 9701 Excelsior Avenue, Hanford, CA 93230 (209) 582-4271	117
William Tos, Jr., Tos Farms, Inc. 5081 15 1/2 Avenue, Hanford, CA 93230	421
William Waggershauser, Mgr, S.M. Damon Estate P.O. Box 308, Wheatland, CA 95692 (916) 633-2847	2,448

#### Financial Reports and Operations

Diamond Walnut functions in a somewhat different manner than fruit or vegetable packing and processing companies in the manner in which it enters into financial transactions with its grower members. Grower-members do not sell their walnuts to the company. Rather, the company markets the product to end users on behalf of its grower-members. The company acquires title to the crop upon delivery to one of the company's receiving stations. An individual grower-member does not have any knowledge of what price he or she will receive for their walnuts until after the product has been sold by the company. In fact, for a given year's crop, the determination of price is not made until the close of the marketing year when all sales have been concluded and all marketing costs are known.

From this point of view, it is as though the company is selling the grower's product "on consignment." By contrast, a contract grower in processing or fresh vegetables has a written agreement with the packer-shipper or processing company in which a price is specified. Many growers are dissatisfied with this arrangement and believe that they should only deliver their crop to

a processor, whether Diamond Walnut or another, if there is an agreed upon price for their crop.

A Walnut Bargaining Association (WBA) was formed by a small group of growers (both Diamond Walnut members and non-members are active in the group) during Spring 1991 for the specific purpose of creating a mechanism for "advance price agreements" in the walnut industry. However, by early 1992, no such agreements between WBA and processors were even in the preliminary negotiation stage.

The above considerations must be kept in mind in examining the financial statements of Diamond Walnut Growers, Inc. The April 1992 Dun & Bradstreet on Diamond Walnut discloses their operating results in some detail and is analyzed in Table III.

Table III  
Diamond Walnut Growers, Inc.

Summary of Operations	
Year Ended July 31, 1991	
Net sales and other revenue	\$171,091,000
Costs and Expenses	<u>58,564,000</u>
Proceeds, incl. value of raw product	\$112,527,000
Other income	1,252,000
Less-Value of members raw products sold	<u>(103,211,000)</u>
Net income	\$10,568,000

As shown above grower members of Diamond Walnut received \$103.2 million in payment for their crops, or an average payment of \$46,914 per member. It is important to realize that these grower payments represent gross cash receipts from the sales of their crop

from which their own farm operating expenses must be deducted.

In addition, the coop had overall net income of \$10.6 million representing the "profit" of the business. Examination of the Balance Sheet for the company shows that the Members' Equity in Diamond Walnut Growers Inc. is \$34 million. This permits us to calculate the Rate of Return on Invested Capital (Table IV). Invested capital represents the value of the member's investment including profits retained and reinvested in the business.

Table IV

Diamond Walnut Growers, Inc.

Rate of Return on Invested Capital

Year Ended July 31, 1991

Net Income	\$10,568,000
Members' Equity (Invested Capital)	\$34,776,000
Rate of Return on Invested Capital	30.3%

This computation essentially shows that Diamond Walnut was an extremely profitable business in 1991. Most industrial firms report an annual rate of return in the range of 10% - 15%. Investments in Savings, Money Market or other types of accounts returned only a small fraction of 30% during 1990 and 1991.

We next consider whether 1991 was an exceptional year by performing the same computation for four successive years. This is shown in Table V.

**Table V**  
**Diamond Walnut Growers, Inc.**

**Rate of Return on Invested Capital, 1988-91**

<u>Year</u>	<u>Net Income</u>	<u>Rate of Return</u>
1988	\$18,752,000	74.4%
1989	5,776,000	19.2%
1990	12,944,000	38.0%
1991	10,568,000	30.3%
	Four-year average	40.5%

Clearly, the four-year average rate of return on investment of 40% shows that 1991 was not an exceptional year for Diamond Walnut.

The high profits earned by the coop have led to a significant increase in the net worth of the company over the four year period. The profits have also enabled the company, in the first three years of this period, to pay off a portion of its long-term debt (as described further below, the long-term debt consists mainly of a loan from the Sacramento Bank for Cooperatives). This is shown in Table VI.

**Table VI**  
**Diamond Walnut Growers, Inc.**  
**Net Worth and Long-Term Debt, by Year**

<u>Year</u>	<u>Net Worth</u>	<u>Long-Term Debt</u>
1988	\$25,185,000	\$17,922,000
1989	30,019,000	15,838,000
1990	34,050,000	13,763,000
1991	34,776,000	17,668,000

By these measures the company is in excellent financial condition and is unusually profitable.

Debt Structure and Major Creditors

Diamond Walnut has only one major outstanding debt obligation. On June 10, 1986 the company borrowed \$13,334,000 from the Sacramento Bank for Cooperatives using the Stockton property as collateral for the loan. This bank is now known as the National Bank for Cooperatives.

The company also borrowed funds from this same bank on three additional occasions. In each of these cases the loan was repaid. The first loan was for \$8,900,000 agreed to on April 25, 1978 and repaid on December 16, 1983. The second loan was for \$17,900,000 agreed to on November 18, 1981 and repaid in full on December 16, 1983. The third loan was for \$40,000,000 agreed to on June 10, 1986 and fully repaid on August 2, 1988.

The company has chosen to finance most of its improvements during the 1980's using leasing arrangements under which major facilities are actually owned by companies set up for this purpose and Diamond Walnut rents the property paying for the usage with periodic lease payments. This type of arrangement enables the company to charge the entire lease payment as a business expense and does not burden it with long-term debt at high rates of interest. The two most significant examples of this type of arrangement are the Bleach Plant and the Cogeneration Plant.

The Bleach Plant equipment is leased from Dial Leasing Company with Valley National Bank of Arizona as Trustee. The total value

of the equipment is approximately \$3,000,000. The lease is dated August 27, 1982.

The Energy Cogeneration Plant is a more complicated arrangement involving Ingersoll-Rand Financial Corp. and a limited partnership known as CU Investors Company #15. The Mellon Bank of Pittsburgh is currently the Trustee for this lease which was originally agreed to on October 1, 1980. The value of this property has not been determined but is estimated at \$4,000,000.

Various other items of equipment are leased in this manner from other major corporations. They include packaging machines, computers, electronic sorting equipment and related items leased from Metlife Capital, A Limited Partnership operated by Metropolitan Life Insurance Company; a steam pressurized processing tank, brine tank, flotation equipment and related items leased from General Electric Capital Corporation; and forklifts leased from Sun-Land Products of California, a subsidiary company of the Sun-Diamond Growers cooperative (of which Diamond Walnut is a member).

Table VII summarizes the creditors (lessors of equipment and holders of long-term debt only) of Diamond Walnut.

Table VII  
Diamond Walnut Growers, Inc.

Creditors (Lessors & Long-Term Debt)

<u>Name of Creditor</u>	<u>Nature of Credit</u>
National Bank for Cooperatives	Deed of Trust
Dial Leasing Company	Bleach Plant
Mellon Bank, Trustee	Cogeneration Plant

Metlife Capital, Ltd.	Processing Equipment
General Electric Capital Corp.	Processing Equipment
Sun-Diamond Growers	Forklifts

Only the National Bank for Cooperatives obligation appears as a liability on the financial statements of Diamond Walnut. This is because the other obligations are leases and lease payments are treated as current expenses.

#### Marketing and Types of Products

There are two major categories of products produced by Diamond Walnut: branded packaged products (in-shell and shelled) and industrial products (shelled). The company completely dominates the production and sale of branded packaged products in the United States. All of Diamond Walnut's branded packaged products are marketed by Sun-Diamond whereas all of the industrial products are marketed by Diamond Walnut itself. The large marketing staff of Sun-Diamond, which serves all five of its member coops, provides a substantial sales advantage on a world-wide basis.

The critical factor in the sale of branded packaged products is the quality of the walnut itself. Diamond Walnut claims that it pays an unusual amount of attention to product quality. The most important determinants of quality are the variety of walnut and the cultural practices utilized by the grower. The company does not provide direct assistance to growers regarding growing techniques, pest control methods and related matters. Instead, it advises its grower-members to rely on the network of farm advisers of the University of California Cooperative Extension Service.

At present about one-third of the coop's shipments are to overseas markets and the vast majority of these are in the form of in-shell product. A niche market of great importance to Diamond Walnut is the overseas Christmas season market. In a number of nations, such as Germany, a Christmas gift of walnuts and oranges is considered a particularly meaningful luxury. The marketing window for this seasonal opportunity is of short duration as compared, for example, with supplying walnuts for use in prepared foods. Thus, the company is especially anxious to be able to ship new crop walnuts to this market immediately after the fall harvest.

Over the past generation consumers are tending to purchase less of the branded packaged products for use as an ingredient in baked goods. Instead, consumers are purchasing greater amounts of prepared food items (either pre-cooked or ready-to-cook items). Conversely, the one segment of the walnut market that has been expanding in recent years is the portion devoted to prepared food items. It is in this area of industrial walnut products that the coop faces stiff competition from about seventy independent processors and handlers.

Diamond Walnut's annual internal marketing goal is to beat the price paid to non-member growers by these independent processor-handlers through the coordinated sales efforts of Sun-Diamond and Diamond Walnut in their two specialized marketing areas. The prices paid to growers by independent processor-handlers must be reported to the Walnut Marketing Board (this Board is discussed later in this report). This price is known as the "average

independent field price." Diamond Walnut sets itself the goal of attempting to beat this price, i.e., attempt to obtain a higher average price for its grower-members. By using the previously discussed method of determining their grower-member price after the close of the marketing year, Diamond Walnut can use its combined marketing strategy to attempt to beat the known independent field price. This strategy also has the effect of discouraging growers who might consider leaving the coop in the hope of obtaining a better price from the independents.

A critical part of the walnut marketing effort is handled by the California Walnut Commission. The Commission assists with the world-wide marketing of walnuts by directly promoting walnut sales overseas as well as developing ingenious strategies for the domestic market. The Commission's activities are also discussed further in a later section of this report.

#### Properties Owned by Diamond Walnut

Diamond Walnut owns title to twelve land parcels in the state of California. All of these properties are free of any mortgage obligation. Table VIII shows a complete list of the properties, including the assessed value.

Table VIII  
Diamond Walnut Growers, Inc.  
Real Property Ownership

1) Situs:19525 E STATE HWY ROUTE 26, LINDEN (UNINC) CA 95236	APN :091-290-09	Assd Land:\$27,863	Use :FOOD PROCESSING
County:SAN JOAQUIN CA		Assd Imp :\$777,074	Date:
Atlas :		Total Val:\$804,937	Bldar:
Zoning:		Lot Size :A1.57	Doc#:
Owner :DIAMOND WALNUT GROWERS INC			Sale:
			1stSTD:
			Story:
			Yrblt:

Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 2) Situs: 19527 E STATE HWY ROUTE 26, LINDEN (UNINC) CA 95236  
 APN : 091-290-10 Assd Land:\$23,730 Use : INDUSTRIAL ACREAGE  
 County: SAN JOAQUIN CA Assd Imp : Date: Bldar:  
 Atlas : Total Val:\$23,730 Doc#:  
 Zoning: Lot Size : A.86 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 3) Situs: 1050 S DIAMOND ST, STOCKTON CA 95205-7087  
 APN : 155-320-07 Assd Land:\$20,339 Use : INDUSTRIAL ACREAGE  
 County: SAN JOAQUIN CA Assd Imp : Date: Bldar:  
 Atlas : Total Val:\$20,339 Doc#:  
 Zoning: Lot Size : A2.54 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 4) Situs:  
 APN : 155-320-15 Assd Land:\$29,506 Use : INDUSTRIAL ACREAGE  
 County: SAN JOAQUIN CA Assd Imp : Date: Bldar:  
 Atlas : Total Val:\$29,506 Doc#: 4129-301  
 Zoning: Lot Size : A5.68 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 5) Situs: 1100 DIAMOND ST, STOCKTON CA  
 APN : 155-320-16 Assd Land:\$83,255 Use : FOOD PROCESSING  
 County: SAN JOAQUIN CA Assd Imp : \$1,227,169 Date: Bldar:  
 Atlas : Total Val:\$1,310,424 Doc#: 4129-301  
 Zoning: Lot Size : A16.22 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 6) Situs: DIAMOND ST, STOCKTON CA  
 APN : 155-320-18 Assd Land:\$208,003 Use : FOOD PROCESSING  
 County: SAN JOAQUIN CA Assd Imp : \$2,660,465 Date: Bldar:  
 Atlas : Total Val:\$2,868,468 Doc#:  
 Zoning: Lot Size : A25.25 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 7) Situs: 1050 DIAMOND ST, STOCKTON CA 95205-7087  
 APN : 155-320-19 Assd Land:\$180,923 Use : FOOD PROCESSING  
 County: SAN JOAQUIN CA Assd Imp : \$29,608,878 Date: Bldar:  
 Atlas : Total Val:\$29,789,801 Doc#:  
 Zoning: Lot Size : A19.76 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 8) Situs: DIAMOND ST, STOCKTON CA  
 APN : 155-320-20 Assd Land:\$15,246 Use : FOOD PROCESSING  
 County: SAN JOAQUIN CA Assd Imp : \$4,338,468 Date: Bldar:  
 Atlas : Total Val:\$4,353,714 Doc#:  
 Zoning: Lot Size : A.29 Sale: Story:  
 Owner : DIAMOND WALNUT GROWERS INC 1stTD: Yrblt:  
 2ndOwn: CO GENERATION FACILITY /DB (DBA)  
 Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566  
 9) Situs: 395 MITCHELL RD, MODESTO CA 95354-3913

APN : 036-19-02-000	Assd Land:\$121,647	Use : FOOD PROCESSING
County: STANISLAUS CA	Assd Imp :\$1,069,520	Date: Bldar:
Atlas :	Total Val:\$1,191,167	Doc#:
Zoning:	Lot Size :	Sale:
Owner : DIAMOND WALNUT GROWERS INC		1stTD: Story:
Mail : 5568 GIBRALTAR DR; PLEASANTON CA 94566		Yrblt:
10) Situs: KOLA ST		
APN : 06-125-001	Assd Land:\$15,064	Use : RESIDENTIAL LOT
County: SUTTER CA	Assd Imp :	Date: 02/79 Bldar:
Atlas :	Total Val:\$15,064	Doc#: 949-214
Zoning:	Lot Size :	Sale:
Owner : DIAMOND WALNUT GROWERS INC		1stTD: Story:
Mail : PO BOX 1727; STOCKTON CA 95201		Yrblt:
11) Situs: 2600 JUNIPER ST, LIVE OAK CA 95953-3913		
APN : 06-125-008	Assd Land:\$10,873	Use : INDUSTRIAL LOT
County: SUTTER CA	Assd Imp :	Date: 02/64 Bldar:
Atlas :	Total Val:\$10,873	Doc#: 642-270
Zoning:	Lot Size :	Sale:
Owner : DIAMOND WALNUT GROWERS INC		1stTD: Story:
Mail : 2600 JUNIPER ST; LIVE OAK CA 95953-3913		Yrblt:
12) Situs: 2600 JUNIPER ST		
APN : 06-126-012	Assd Land:\$16,310	Use : INDUSTRIAL (NEC)
County: SUTTER CA	Assd Imp :\$423,562	Date: 02/64 Bldar:
Atlas :	Total Val:\$439,872	Doc#: 642-270
Zoning:	Lot Size :	Sale:
Owner : DIAMOND WALNUT GROWERS INC		1stTD: Story:
2ndOwn: DIAMOND WALNUT GROWERS /DB (DBA)		Yrblt:
Mail : PO BOX 1727; STOCKTON CA 95201		

Note: APN is the County Assessor's Parcel Number.

The company has four walnut receiving stations where the raw product is gathered: Linden (San Joaquin County), Live Oak (Sutter County), Modesto (Stanislaus County) and Visalia (Tulare county). Three of these are described in the above property list.

#### Management

All of the current top management are individuals who have pursued traditional business careers outside of the walnut industry before joining the company. There is no evidence that Diamond Walnut intends to recruit internally for its highest management jobs. The members of this management group are listed herewith.

President (Chief Executive Officer)

William Cuff, 50 years old; BA, Yale University (1964)  
MBA, Columbia University (1966)  
1966-77 General Foods Corp.  
1977-79 Standard Brands, Inc.  
1979-86 Nestle Company  
1986-90 The Bachman Company  
1990- Diamond Walnut

Senior Vice-President, Marketing-Industrial Sales

Thomas D. Warner, 44 years old  
1973-78 Proctor & Gamble Company  
1978-82 RJR/Del Monte Corp.  
1982- Diamond Walnut

Chief Financial Officer

Jerry A. Bahma, 43 years old  
1971-89 Land O' Lakes  
1989-91 Superior Farming Company  
1991- Diamond Walnut

Vice-President, Operations

Robert Marek, 49 years old  
1965-90 General Food Corp.  
1990-91 Bear Creek Corporation  
1991- Diamond Walnut

Competition

As indicated previously Diamond Walnut is responsible for 50% of the U.S. industry's shipments. It is also the only major player in the branded packaged product segment.

The seventy or so independent processor-handler companies are mostly small walnut hullers or bleaching operations. Typically, they are locally owned and invariably represent an expansion of a grower's operations into the processing business. In fact, grower dissatisfaction with the processor/handler end of the business leads them to believe that they could do a better job. And so they invest in hulling equipment and set up an operation. There have

been more than twenty such firms started up in the past decade.

Diamond Walnut's major competition is in the shelled product segment of the walnut business, mainly the industrial product line. It is this segment that has experienced growth in recent years.

The major companies active in this segment and who are Diamond Walnut's competitors are Mayfair Packing Co., Inc., Mariani Nut Company, Quality Nut Co., and Mid-Valley Nut Co., Inc. Only Mid-Valley limits its business to walnuts. The other three firms also process other products such as almonds (Mariani Nut and Quality Nut) or dried fruit (Mayfair Packing). They are the only companies with annual sales which exceed \$10 million and whose products include walnuts. Table IX shows the estimated annual sales (both walnuts and other products) of these companies.

Table IX

Major Walnut Processing Companies

California, 1991

Name	Employees (peak)	Sales (millions)
Mariani Nut Company	300	\$60.0
Mayfair Packing Co., Inc.	600	50.0
Quality Nut Co.	100	14.3
Mid-Valley Nut Co., Inc.	200	14.0

Source: Dun & Bradstreet Reports

Quite clearly the largest of these companies has annual sales that are no more than 1/3 as large as Diamond Walnut's. Since both Mariani and Mayfair also pack other products their walnut sales are likely to be a good bit smaller than the above figures suggest.

Mayfair sells about 60% of its products in the export market.

Mayfair has been aggressively recruiting growers in recent years in direct competition with Diamond Walnut. Fieldmen for Mayfair argue that they can do a better job of processing, packing and selling their product, especially in the industrial segment of the business. The company has two packing plants located in San Jose and has receiving stations in Colusa, Farmersville, Hollister, Marysville, Red Bluff, Porterville and Yuba City. Unlike Diamond Walnut, Mayfair operates farms of its own. The company has 1,713 acres of walnuts and 758 acres of prunes on these farms.

Mariani is a smaller firm than Mayfair. It has both an almond processing plant and a walnut processing plant in Winters. Both Jack Mariani and Dennis Mariani, owners of the company, also operate walnut farms of their own. The combined acreage amounts to 1,245 acres of walnuts and 130 acres of prunes. Mariani has a mail order business as well as supplying nuts to the food processing industry.

Both Quality Nut and Mid-Valley Nut are substantially smaller firms than Mayfair or Mariani. In both cases the companies were started in the late 1960s and are outgrowths of farming operations of the owners.

#### Member-Grower View of the 1991 Strike

Several Diamond Walnut member-growers in the San Joaquin County area were interviewed in an attempt to determine grower views regarding Teamsters Local 601 and the 1991 strike. Their views on the coop were also sought in an effort to find out if there was any possibility of splitting a significant portion of the

members from the company's management.

All member-growers contacted believe that the coop, at present, is acting in their best interest. Despite the problems of mis-management that surfaced in 1985, there was unanimous agreement that the present management is highly capable and providing growers with the best possible return for their crop. It was also their view that the company is a democratically-controlled organization and that growers "control" management and their decisions.

Most member-growers felt that the 1991 strike was a "stupid" move by the Teamsters and that it was a deliberate attempt to hurt growers. As may be recalled, the 1991 harvest was somewhat late: delayed by about two weeks because of the cool summer and unusual heat during September. Since the harvest timing is crucial for the ability of the coop to market in-shell products to the overseas Christmas market, the delay due to the weather created the possibility of missing a major share of that market.

The 1991 crop was unusually large, the biggest on record. Prices were strong bringing growers the ideal combination of a large crop and high prices. Thus, most growers saw the chance to make a larger than usual income from their production.

The strike was viewed as an effort to further delay processing beyond the delays in the timing of the harvest due to weather and had the potential to cause the coop to miss a major share, or possibly all, of their premium market opportunity. All member-growers agreed that the timing of the strike demonstrated bad faith on the part of the local union leadership. Moreover, with a record

crop and the prospect of high prices, all agreed that the strike was a potentially disastrous situation for all of the member-growers.

When it was pointed out that the company was providing an excellent return to growers, the typical response was, "Well, it is about time!" Clearly, these farmers, all of whom are medium-scale family operations, held the view that they were entitled to the returns from a good year and that the union's actions were putting the farmer's income at serious risk.

The company not only provided growers with written material about the management view of the strike but also held several meetings for growers in each of the Member Districts. The meetings were open to all member-growers and included an opportunity to question management about its actions.

At the same time most growers were poorly informed about the actual situation. For example, one grower stated that workers were offered a chance to return to work with no questions asked, at the same level of pay and benefits as before, and that about one-third of the workers had done so. This grower also believed that more workers would return if the union would stop actively intimidating them.

With respect to the future, all growers held the view that the workers had lost the strike, had been replaced and were now out of a job. One grower commented, "What do you expect with all of those people trying to find work in Stockton?"

## The California Walnut Industry

Walnuts are grown on a commercial scale in only a very few countries of the world: China, India, Italy, France, Turkey and the United States. This is because walnut trees are very sensitive to soil and climate conditions. Dry, sunny weather and high-quality, heavy loam soils are required.

The United States is the world's leading producer by a large margin. For example, in 1991, U.S. production was approximately 250,000 tons whereas for Turkey, the second-ranked producer, production was 72,000 tons, and for France, the third-ranked producer, production was 12,000 tons. But France is also an importer of walnuts.

Within the United States virtually all commercial production is concentrated in California. Less than 1% of U.S. production is located in Oregon and Washington. For all practical purposes, California can be thought of as the world's leading producer.

There are substantial variations in quality and yield among the ten varieties of walnut trees in commercial production in California. Diamond Walnut is selective regarding which varieties it will allow to be included in its products. Growers of the excluded varieties may not market them through the company.

Walnuts have a relatively long storage life. And, as a perennial crop, the trees require only a limited amount of labor once an orchard is established. For these, as well as aesthetic reasons, walnuts have been a popular tree for hobby farmers and other part-time farmers. Receiving stations operated by

independent processor-handlers will accept even very small loads from such producers.

Walnuts are grown on 7,446 farms in the state of California. Since the total state walnut acreage is 210,204 acres, the average walnut farm has about 28 acres of trees. However, this figure is somewhat misleading. The fact that many part-time farmers have walnut plantings means that there are thousands of growers who each have only a few acres of trees: 60% have less than 15 acres.

The largest 439 walnut farms, out of the state total of 7,446, account for more than half of the state's walnut production: each at least 100 acres of walnut trees. The size distribution of walnut orchards in California is shown in Table IX.

**Table IX**  
**Size Distribution of Walnut Orchards**  
**California, 1987**

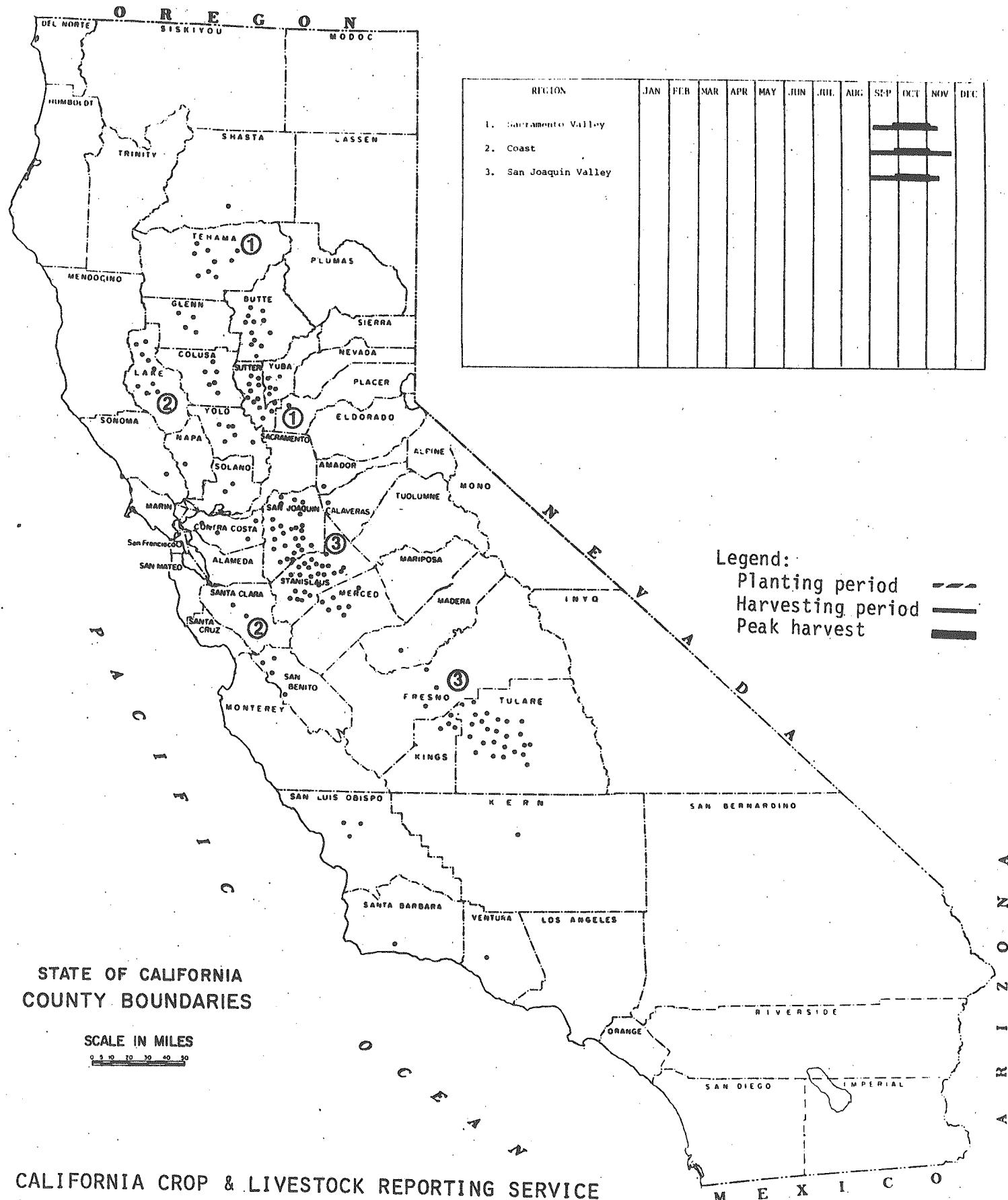
<u>Size of Orchard</u>	<u>Number of Farms</u>	<u>Acres Harvested</u>
500 acres or more	28	22,230
250-499.9 acres	74	20,668
100-249.9	337	41,714
50-99.9	611	36,543
25-49.9	863	25,539
15-24.9	1,010	15,822
Less than 15 acres	4,523	18,472
Total	7,446	180,988

Only the largest producers have a significant economic stake in the performance of the industry. For that reason it is not surprising that the members of the Board of Directors of Diamond Walnut are representative of the larger producers.

Figure 1 shows the location of walnut plantings within the state of California. Walnuts require higher quality soils than

FIGURE 1

WALNUTS 1982  
TOTAL ACREAGE = 177,812  
1 dot = 1,000 acres



CALIFORNIA CROP & LIVESTOCK REPORTING SERVICE  
Source: County Agricultural Commissioners' Reports

other nut crops produced in California, such as almonds and pistachios. This factor limits the areas of the state where the crop can be produced. Production is primarily in the San Joaquin and Sacramento Valleys with minor amounts in several coastal valleys. The counties with the largest production are San Joaquin, Tulare, Stanislaus, Butte, Sutter, Merced and Tehama. These seven counties account for three-quarters of the state's crop.

Walnut production has expanded rapidly in California during the last two decades. In the three year period 1970-72 annual production averaged 119,667 short tons per year. However, for the three years 1989-91 production has averaged 235,333 short tons per year, a 97% increase over the twenty years. Production for each of the last twenty years is shown in Figure 2.

While production has expanded rapidly, harvested acreage has increased by a much smaller amount. In 1970-72, harvested acreage averaged 151,527 acres per year. By 1989-91, the figure had climbed to 180,333 acres per year, a 19% increase. The fact that production increased at a rate five times greater than the increase of harvested acreage demonstrates that improvements in walnut yield (tons per acre) are mainly responsible for the gains. Harvested acreage is shown for each year in Figure 3.

The factor mainly responsible for the improvement in yields has been the introduction of new walnut varieties, particularly the Chandler and Sunland varieties. The former variety has a very light colored meat favored by consumers. The latter has a higher than average yield but can only be grown in the San Joaquin Valley.

FIGURE 2

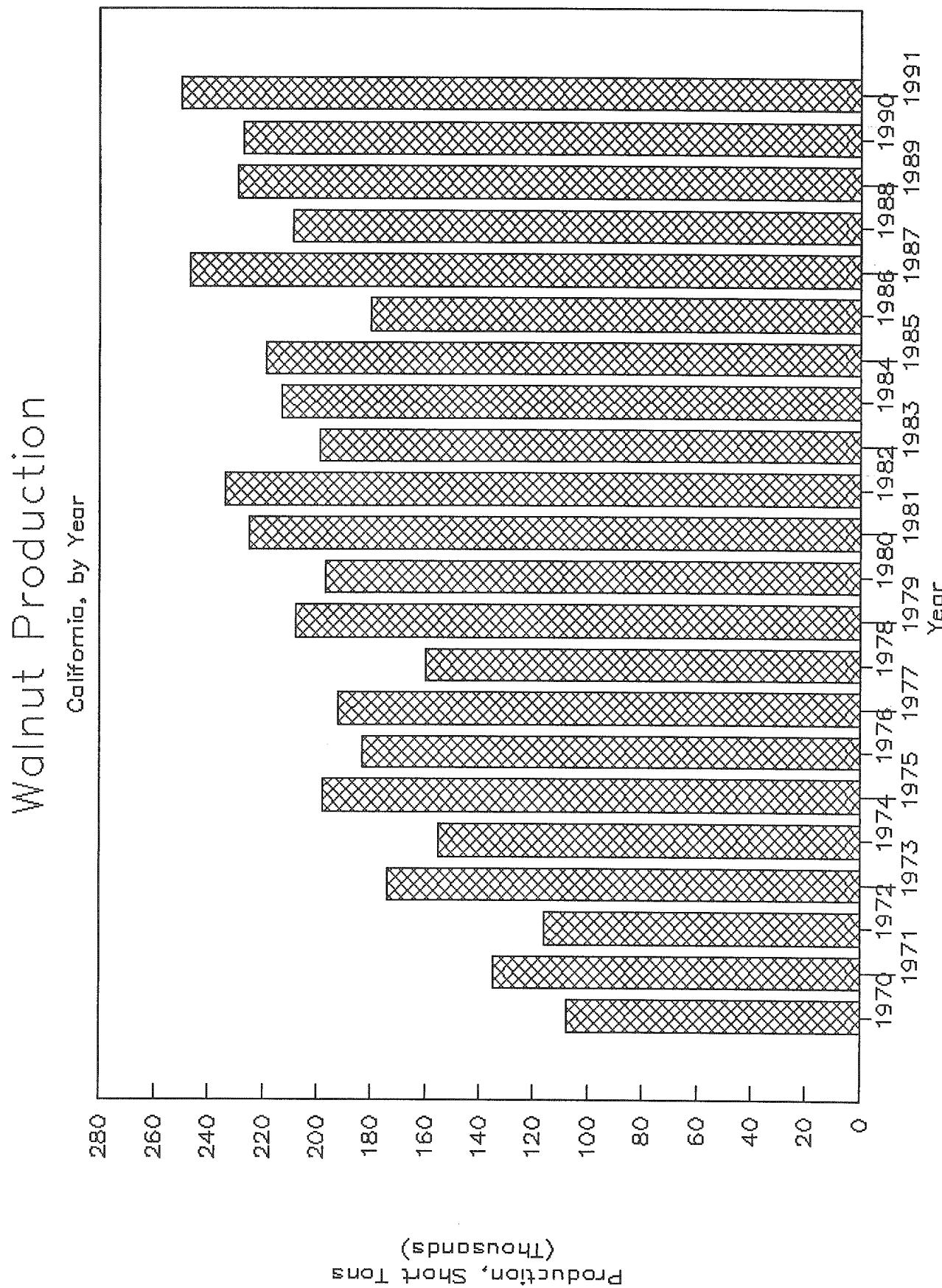
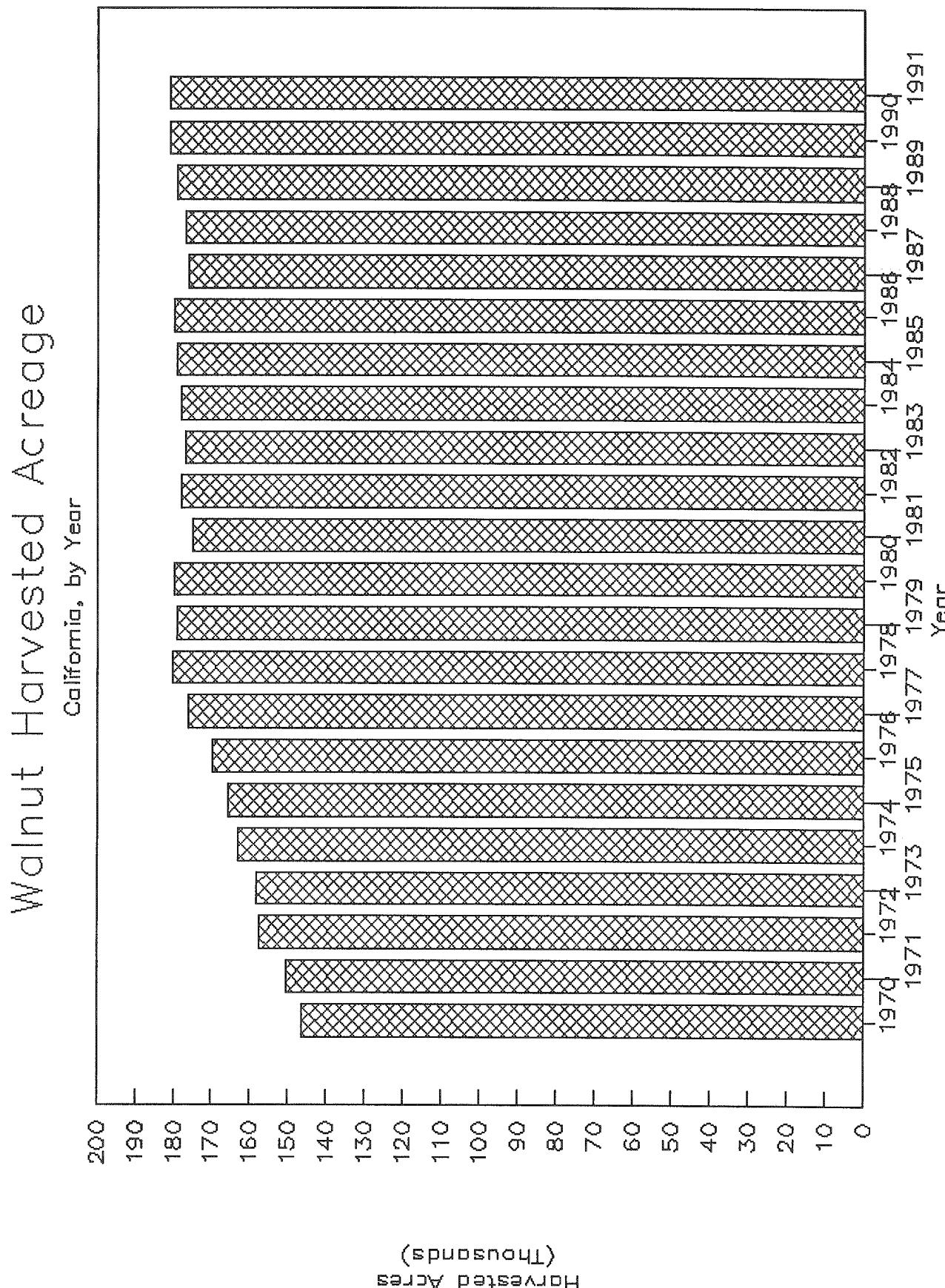


FIGURE 3



Marketing is a problem of special interest to walnut growers. Since California is the dominant producer and production has been increasing by significant amounts in recent years, aggressive selling of the crop is the only way that producers can avoid over-production and declining prices. For this reason the industry has been placing special attention to the export market.

At present about 40% of California walnuts are exported. The value of exports of California walnuts is shown in Figure 4. Clearly, the recent increase is quite significant.

The major overseas customers are listed below, with the three-year total of their imports shown in units of 1,000 kg.

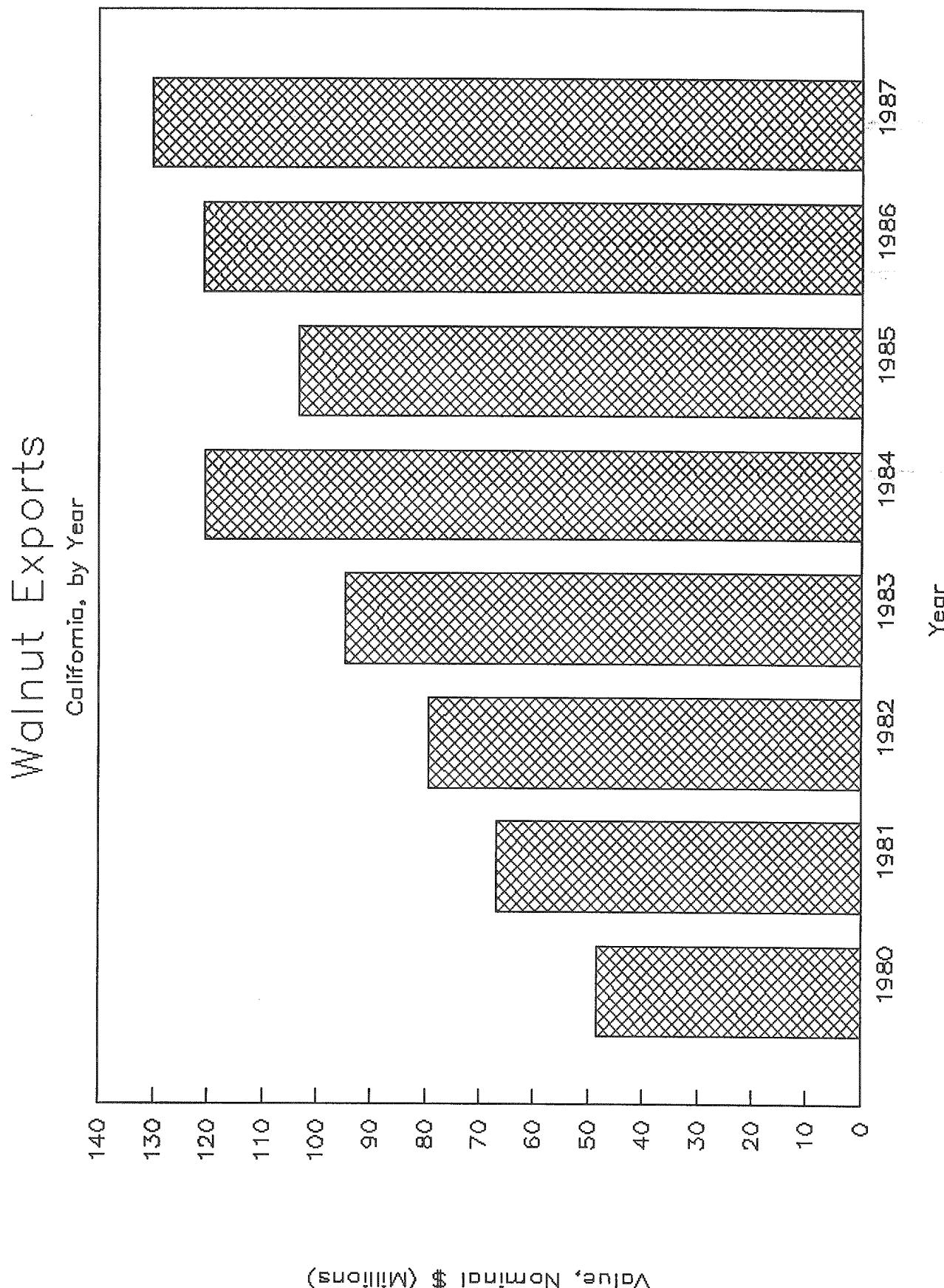
#### Importers of California Walnuts

1988-1990 Total

<u>Country</u>	<u>Imports, 1,000 kg.</u>
Germany	43,806
Spain	41,468
Italy	21,890
Netherlands	9,065
Canada	5,360
Total, All Nations	151,028

Walnut exports have greatly benefitted from the decline in the value of the U.S. dollar. Between 1984 and 1991, the dollar vs. the German mark declined from 2.8 marks per dollar to 1.6 marks per dollar. In other words, it takes fewer marks to buy a dollars worth of goods today.

FIGURE 4



### Grower Returns

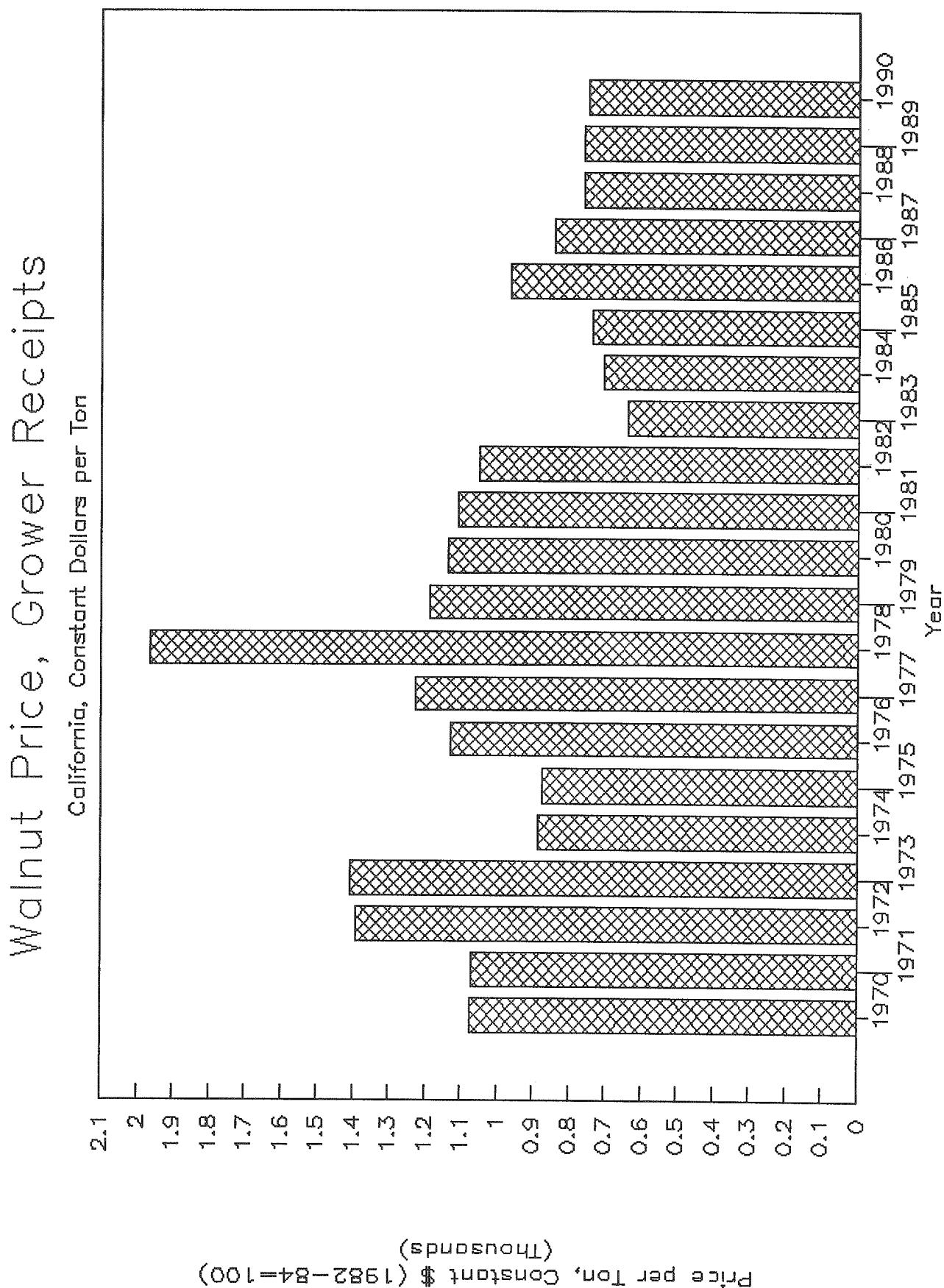
Despite all of the favorable conditions growers have not received as great a return as they believe they need. This is due to the fact that demand has not increased as fast as supply. Thus, prices tend not to increase over time because there have been ample increases in supply to meet small increases in demand.

Figure 5 shows the price per ton received by growers, corrected for inflation. That is, we have adjusted the nominal price for changes in the California consumer price index. Except for 1978 the general trend has been downward, and was especially low during the three-year period 1983-85. For this reason growers are especially anxious to see a higher price for their crop. The prospect of a "good" season in 1991 was something that most growers were longing for and the strike was seen as a serious threat to their prosperity.

Individual grower returns vary greatly with yield and variety. An estimate for the central San Joaquin Valley is that growers have an average net return (profit) of about \$245 per acre after taking account of all production expenses. Thus, a grower with 28 acres, the state average, could be expected to have a profit of about \$6,860 per year. On the other hand a grower with 410 acres, the average for the Diamond Walnut Board of Directors would have a profit of about \$100,450 per year.

Grower costs average about \$950 per acre of harvested walnuts; a price to growers of \$0.40 per pound represents break-even. The 1991 crop will probably bring growers about \$0.60 per pound.

FIGURE 5



### Market Conditions

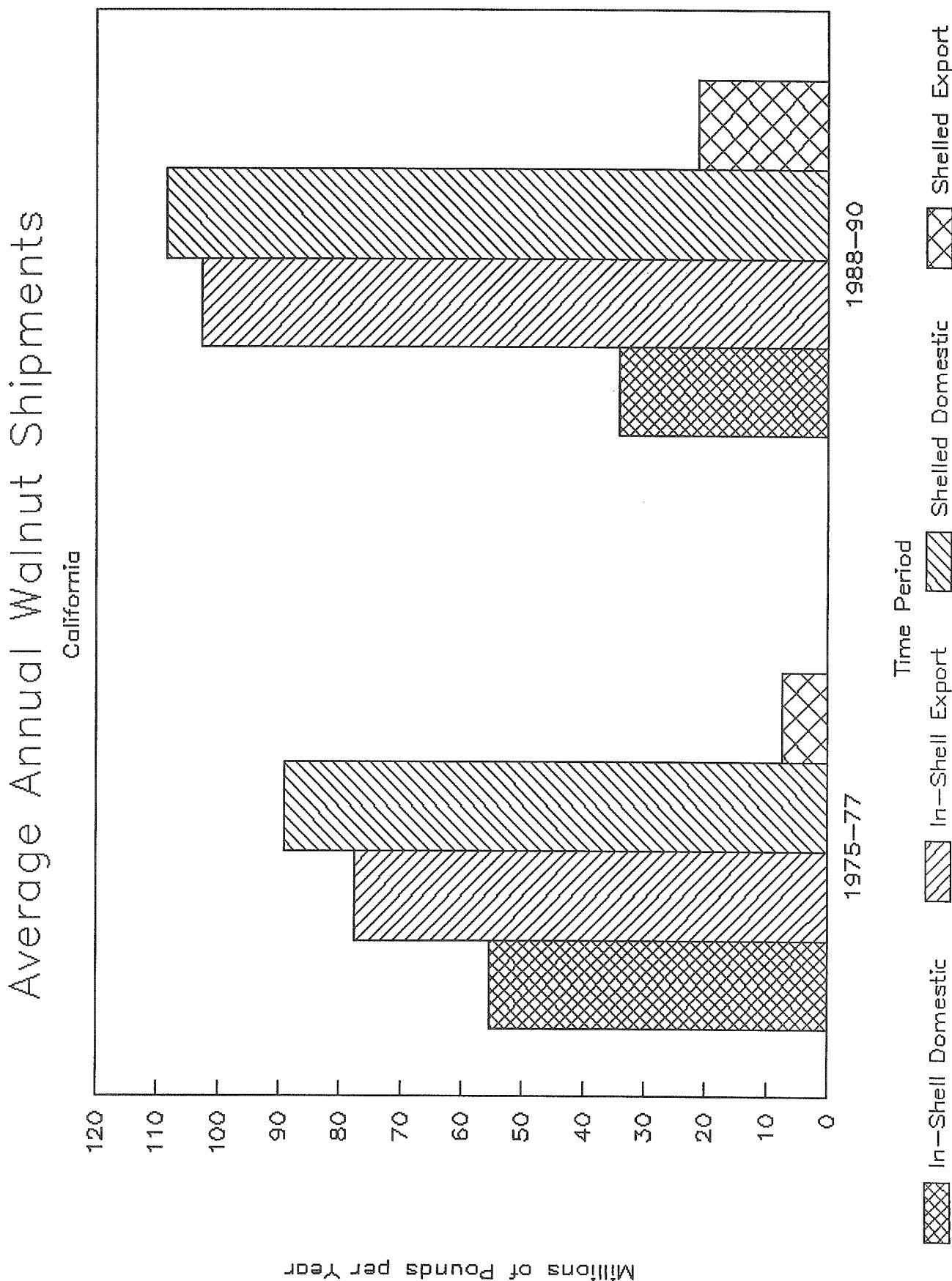
As suggested by the decline in real walnut prices to growers, demand has not exceeded supply in most years. In fact, there has been a pronounced shift in the pattern of walnut consumption over the last generation. In the three-year period 1975-77, domestic in-shell sales averaged 55,502,000 lbs. per year. By 1988-90, domestic in-shell sales amounted to 34,151,000 lbs. per year, a decline of 38%.

Exported in-shell sales have increased considerably in this same period, from 77,554,000 lbs. per year for the 1975-77 period (three-year average) to 102,681,000 lbs. per year for the 1988-90 period, a 32% increase. In fact, the amount of this increase (+25,127,000 lbs. per year) has more than offset the decline in domestic in-shell consumption (-21,351,000 lbs. per year).

Equally important has been the rise in domestic and exported shelled walnut sales. The former has grown from 89,809,000 lbs. per year for the 1975-77 period (three-year average) to 108,309,000 lbs. per year for the 1988-90 period. Exports of shelled walnuts have increased from a mere 7,482,000 lbs. per year in 1975-77 to 21,300,000 lbs. per year for the 1988-90 period, a spectacular 185% increase.

Thus, exports now represents 75% of the in-shell product but are just 16% of the shelled product. Interestingly, total in-shell product sales (domestic plus exports) have changed little over the past fifteen years but the increased, heavy reliance on the export market is quite striking. This is shown in Figure 6.

FIGURE 5



In contrast, overall shelled product shipments (domestic plus exports) have increased by 33% over the same fifteen years but the export market is a minor portion of those sales. However, the export portion is increasing with each passing year and could become more important in future years.

If sales are expressed in terms of value (dollars instead of weight) the figures described above become more skewed toward the shelled product. This is because shelled walnut products bring 2.44 times more in revenue than do the in-shell products. But the higher costs of hulling, processing and shipping also means that the shelled product cost is significantly greater than for the in-shell product and so the profit margin is not necessarily greater.

Using dollar sales figures about 71% of 1990-91 crop year sales were accounted for by the shelled product (59% domestic and 12% export) and 29% were from in-shell product (7% domestic and 22% export). The great majority of the shelled product is for industrial use as ingredients for processed food products.

#### Government Assistance to the Walnut Industry

There are two quasi-government agencies with responsibilities to assist the industry: the California Walnut Commission and the Walnut Marketing Board. Both agencies were created under terms of the 1937 marketing order law that authorized such bodies, both have the power to tax all walnut growers in the state, and both serve to assist growers with managing the marketing of their products.

The Walnut Marketing Board (WMB) serves several purposes: first, it has the authority to regulate the supply of product by

requiring growers to withhold a portion of their crop from shipment when prices fall to point where supply reduction would likely provide a floor on the price; second, it provides financial support for research on improving walnut production practices; and, third, it supports public relations activities on behalf of the industry. The WMB is financed by an assessment of \$0.0085 per lb. of marketable kernels of walnuts from each grower. The fee is administered by processor-handlers and is forwarded to the agency's account.

The chair of the WMB is Jerry Siebert. During 1991-92 the operating budget of the WMB was \$1,804,116, of which \$417,128 was for research and \$848,000 was for public relations. In the most recent period the WMB has not required growers to withhold any crop from the market because it has not felt that industry conditions warranted such a severe measure. The WMB also keeps records on the price received by growers for their crop, especially the price paid by independent processor-handlers.

The California Walnut Commission (CWC) has eleven members and is chaired by Craig McNamara, a walnut grower from Winters. The purpose of the CWC is to promote the sale and expanded use of walnuts on a world-wide basis. The CWC is financed by an assessment of \$0.005 per lb. of walnuts from each grower. The 1991/92 CWC budget is \$2,737,000 and is used entirely for the marketing of walnuts. In addition to the resources generated by assessments, between 1986 and 1990 the CWC received \$37.8 million in U.S. Department of Agriculture funds under the Market Promotion

Program (MPP).

The MPP seeks to increase awareness of and consumption of California walnuts through a variety of marketing techniques including advertising and consumer promotion. The MPP funding has enabled the CWC to augment its regular budget based on grower assessments, as described above, to about \$8 million per year. According to Turner Oyloe, Executive Director of the CWC, "We have an active export market development program, which is heavily supported by the U.S. Department of Agriculture, to expand overseas markets."

The MPP funds have been used to target 12 countries, six in Europe, four in the Pacific Rim, Canada and Israel. In the eleven countries which permitted the program to go forward, sales increased by 58% over the past five years as compared to just a 9% sales increase in countries which were not targeted.

Mr. Oyloe is a very intelligent man who knows how to pursue his goals. As an example, the CWC was able to interest Dreyer's Ice Cream Company in promoting varieties with walnut ingredients and, in return, assisted Dreyer's in obtaining a reduced price on its purchase of shelled walnut products.

## Appendix I

### Diamond Walnut Growers, Inc.

#### District Board of Directors

##### District I, Sub-District I-1

William C. Baer	Glendale
Walter Christensen	San Luis Obispo
William H. Cooper	Lompoc
Russell A. Craig	Lompoc
Arthur Hibbits	Lompoc
Carl Hofmeister	Ojai
Richard A. Kieding	Solvang
Alan H. Mercer	Buellton
Alan Wells	Santa Ynez

##### Sub-District I-B

Frank Alves, Jr.	Visalia
Dennis Atkinson	Arvin
Jonathan Barker	Hanford
Brian Blain	Visalia
R.G. 'Jerry' Burns	Porterville
Richard Carstens	Fresno
Addison Clark, Jr.	Visalia
John Colbert	Porterville
Robert Graves	Visalia
James C. Hamilton	Visalia
Richard Hash	Visalia
Gary Hester	Visalia
Joseph B. Summers	Hanford
Tom Swall	Tulare
William Tos, Jr.	Hanford
Daniel S. Van Beek	Hanford
William Verboon	Hanford

##### Sub-District I-C

Maureen Curran	Templeton
Colleen Di Collelmo	Paso Robles
Robert W. Frank	Templeton
John W. Harrington	Paso Robles
James W. Lopes	Fremont
Arvid Myhre	San Ardo
David J. Osgood	Paso Robles
Ralph Riva	Livermore
Matt Van Steenwyk	Paso Robles

## District II

Mike Burden	Modesto
Richard B. Crow	Patterson
C. Richard Dawson	Escalon
Frank DeBenedetti	Linden
Robert Driver	Modesto
James Edwards	Tracy
Henry Eilers	Linden
Richard D. Ernst	Modesto
Charles Hansen	Patterson
William C. Hosie	Linden
Marvin Kaminska	Crows Landing
Eric Leffler	Stockton
Robert Longstreth, Jr.	Escalon
Richard Miller	Linden
Earl Perez	Crows Landing
Richard Salmon	Stockton
Robert M. Sorensen	Modesto
Everett Souza, Jr.	Patterson
William Treshler	Gustine
Ann Weiser	Gustine
Ray Yater	Linden

## District III, Sub-District III-A

Ray Anderson	Meridian
John Frye	Valencia
John Gilbert	Wheatland
Charles Gordon, Jr.	Brooks
Dan Gover	Anderson
Thomas Heffernan	Gerber
Joe Hughes	Gridley
Robert Lea	Rocklin
Marie Long	Pasadena
Paul Martin	Corning
Roderick W. Minkler	Chico
John Repanich	Corning
David Sheuring	Davis
Richard F. Taresh	Rio Oso
William Waggershauser	Wheatland
Gerald F. Willoh	Colusa

## Sub-District III-B

Melvin A. Abreu	Byron
Tino Bacchini	Brentwood
Evo Baldocchi	Oakley
Victor Barnes	Nice
Everett Fechter	Calistoga
Clarence Machado	Stockton
Louis Mangini	Pleasant Hill
Alex Suchan	Upper Lake
Jerry Tennant	Byron

NAME

Bella Farms Partnership 07-062702-Rch. #2  
 24800 E. Shelton Road 07-062700-Rch. #1  
 Linden, CA 95236

(for Association use only)

## APPLICATION FOR MEMBERSHIP

(Note: The detailed provisions of the marketing agreement are set forth in the colored pages of the booklet containing the Articles of Incorporation and By-Laws of the Association.)

The undersigned applies for membership in Diamond Walnut Growers, Inc. ("Diamond") and agrees as follows:

1. Membership shall be effective upon written acceptance by Diamond.
2. The undersigned acknowledges receipt of a copy of amended Articles of Incorporation ("Articles") and amended By-Laws of Diamond and agrees to be bound thereby and by any changes or amendments thereto and by the rules and regulations heretofore or hereafter adopted by Diamond pursuant to the Articles and By-Laws. The undersigned specifically understands that said By-Laws contain provisions which will impose the following obligations, among others, on the undersigned upon acceptance of this application:

(a) By virtue of the marketing agreement expressed in Article VII of the By-Laws, the undersigned will be obligated to sell and deliver to Diamond all walnuts which he produces (including production hereafter acquired) for a five-year period ending on the fifth February 28 to occur after the application is accepted. The By-Laws provide for liquidated damages and other remedies in event of breach of this obligation to market.

(b) The marketing agreement and membership of the undersigned will be automatically renewed for an additional five-year period after each termination date unless written notice of intent to terminate the marketing agreement is delivered during the period from January 1st through February 28th immediately preceding the termination date.

(c) If any local association of which the undersigned is a member elects to continue to actively receive, process and/or otherwise handle walnuts to be marketed through Diamond and such local association enters into an agreement with Diamond pursuant to Section 7.08 of the By-Laws, then the undersigned agrees to maintain membership in such local association during the term of his marketing agreement with

Diamond unless and until the local association releases him from such obligation.

(d) By becoming and remaining a member the undersigned agrees to take qualified written notices of allocation into his gross income during the taxable year in which the notice of allocation is received, even though such allocation is not paid in cash in that year. A copy of this By-Law provision is printed on the reverse side hereof.

Reference is made to the Articles and By-Laws for the controlling statement of all rights and obligations of membership. The foregoing subparagraphs only summarize certain provisions.

3. The undersigned hereby authorizes and directs Diamond to honor any demand by a local association of which he is a member to pay to such local association a specified portion of the proceeds otherwise payable by Diamond to the undersigned. The purpose of this authorization is to supply funds required by any local association to finance (a) receiving, handling and/or processing walnuts to be marketed through Diamond, or (b) rendering services, selling supplies in connection with the production of such walnuts or performing any other functions in connection with the operation or liquidation of such local association; however, Diamond shall not be responsible to determine the purpose of any such demand. Payment of any such amount to a local association shall be deemed the equivalent of payment to the undersigned and payment by the undersigned to such local association.

4. The undersigned warrants and represents that he is not a party to any agreement which is in any way inconsistent with his obligation under the terms of the Articles of Incorporation and By-Laws of Diamond, including the obligation to sell and deliver all of his walnuts to Diamond during the term of the Marketing Agreement or any renewal thereof.

*Well. terms reultimo  
by: \_\_\_\_\_ Robert W. Paulus  
(Signature)*

Print name and address below:

BELLA FARMS PARTNERSHIP24800 E. Shelton RoadLinden, CA. 95236DATED: February 12, 1982Fred J. J. II  
Social-Security No.: 94-2781551Local Area: LindenDistrict No.: III

EXHIBIT "B"

DIAMOND WALNUT GROWERS, INC.

*By Robert W. Paulus*

PLEASE COMPLETE REVERSE SIDE OF THIS FORM

40

## ARTICLE IX—MISCELLANEOUS

**Section 9.01—Consent of Members to Take Allocations Into Income**

Membership in this Association shall constitute the consent of each member to take any written notice of allocation received by him during the taxable year into his gross income at its stated dollar amount to the extent provided in 26 U.S. Code 1385(a). The foregoing shall apply only to written notices of allocation relating to patronage occurring after June 30, 1963.

83.057986

The effect of this section is that each member who becomes or remains a member after the effective date of this section agrees by such act alone to include qualified written notices of allocation (as defined in 26 U.S. Code 1388) in income in the year that the notice of allocation is received, though such allocation is not repaid in cash until a subsequent year.

## **IMPORTANT!**

Fill out the number of acres and age of trees. While not a part of the agreement, this is a record of each member's acreage and is essential for statistical purposes. Be sure to complete the location, mileage information and name of previous owner.

SEE ATTACHED  
LIST -

COUNTY IN WHICH GROVE IS LOCATED SAN JOAQUIN  
Ranch No.1-Shelton Road and Escalon Bellota Rd.  
LOCATION, ON ROAD, NEAR Highway 26 ROAD.  
Ranch No.2-Eight Mile Road MILES TO LOCAL OR LOADING STATION 10

NAME AND ADDRESS OF PREVIOUS OWNER \_\_\_\_\_ Daniel D. Compton

P. O. Box 606

Woodbridge, CA, 95258

d 3057986

83057289

BELLA FARMS  
24800 E. Shelton Road  
Linden, CA. 95236

February 18, 1982

## RANCH I - Shelton Road and Escalon Bellota Road

<u>Variety</u>	<u>Acres</u>	<u>Year Planted</u>
Payne	92-	1921
Payne	5.1	1930
Payne	20	1945
Payne	98.5	1920
Payne	3	1978
	<u>218.5</u>	
Mayette	9	1921
Mayette	2.5	1948
Mayette	5.5	1921
	<u>17</u>	
Eureka	25-	1948-54
Eureka	3	1948
	<u>28</u>	
Hartley	2	1957
Hartley	10	1969
Hartley	3	1980
Hartley	10	1980
	<u>25</u>	
Tehama	4	1970
Tehama	2	1980
Tehama	8	1980
	<u>14</u>	
Serr	4	1979
Serr	2	1960
	<u>6</u>	
Mixed	25	1965
	<u>25</u>	
Franquette	20-	1921
Franquette	2.5	1928
Franquette	15	1923
Franquette	14.5	1948
Franquette	14.5	1972
	<u>60</u>	
<b>GRAND TOTAL - RANCH I</b>		<b><u>399.5</u></b>

## RANCH II - Eight Mile Road

Payne	100-	1914
Franquette	5	1914
Serr	10	1965/81
Hartley	18-	1965/81
Mixed	<u>2-</u>	1914
<b>GRAND TOTAL RANCH II-</b>		<b>135</b>

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## ARTICLE VII - MARKETING AGREEMENT

### Section 7.01 - Introduction

This article is sometimes referred to for convenience as the "marketing agreement." It expresses the terms of an agreement between each member as a patron and the Association to which each member agrees by application for membership and the Association agrees by acceptance of such application to be bound. The provisions of this article together with all other relevant terms of the Articles of Incorporation and by-laws are in lieu of a separate marketing agreement.

### Section 7.02 - Delivery of Walnuts for Consignment Marketing

(a) Each member agrees to deliver to the Association for marketing all walnuts produced by such member during the time this Marketing Agreement is in effect, except:

(1) Walnuts which the member retains for personal use and not for sale, and

(2) Varieties such as the Willson Wonder, Bijou, Klondike, and Gant, which the Association specifies as unsuitable for marketing through the Association at time of execution or renewal of a marketing agreement.

(Continued)

~~83057209~~

(3) Walnuts produced by the member from additional acreage of which the member has acquired control after applying for membership in Diamond and the production from which has been rejected by the Board of Directors under Section 2.01 of the By-laws or rules and regulations adopted by the Board pursuant thereto.

(b) The Association may designate the time, place, manner and quantity of delivery of walnuts by members to the Association, and to a Local Association, or to any other receiving point designated by the Association in order to enable the Association to efficiently receive, process and/or pack and market the walnuts of all patrons.

#### Section 7.03 - Marketing

(a) The Association agrees to market said walnuts together with walnuts delivered by other members or otherwise acquired, in such manner and at such prices as the Association in its sole discretion deems best for all members.

(b) Each member designates and appoints the Association as its agent in all matters concerning the marketing of said walnuts. Full power and authority are conferred upon the Association to conduct its marketing activities in such manner as it, in its sole discretion, determines to be for the best interests of all its members. No member by virtue of having furnished any walnuts shall exercise any control over the Association with regard to any phase of the marketing of said walnuts or the conduct of the business of the Association, except by exercise of voting power as a member and through the duly elected Board of Directors. The member shall not be directly liable under any rules of agency on account of any contract or contracts made by the Association in the conduct of its business.

(c) As marketing agent for the member, the Association may, among other things, sell such walnuts or the products produced therefrom, pledge or otherwise hypothecate the same or any part thereof, transfer title thereto or a security interest therein and collect the proceeds, all in its own name exclusively, or in the name of any subagent.

#### Section 7.04 - Pools and Classifications

The Association is authorized to pool or mingle said walnuts with walnuts delivered by other members or otherwise acquired and to classify and/or pool walnuts by size, quality, variety, time of delivery, or other standards as the Board of Directors shall from time to time prescribe.

(Continued)

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The Board of Directors is hereby given full power from time to time to amend or modify said classifications or pools, to establish additional pools, to determine in which pool any walnuts shall be included, and to adopt and amend rules and regulations with respect to such pools.

Section 7.05 - Obligation to Return Net Proceeds

The Association shall pay to each member his pro rata portion of the net proceeds of the sales of all walnuts on the basis of the quantity or value or both of walnuts delivered by such member. Net proceeds shall be determined by deducting from the gross proceeds received from the sale of all walnuts delivered by all patrons the expenses of receiving, packing, processing, marketing and otherwise handling such walnuts. Expenses shall include, but not be limited to, all general and administrative expenses, losses (unless the Board of Directors shall otherwise determine as hereafter provided), allowance for depreciation on property and bad debts, and any interest on funds used by the Association. The Association may retain amounts from such net proceeds to provide capital for the operations of the Association as contributions to the revolving fund or funds and as reasonable unallocated reserves.

Within eight and one-half months after the close of each fiscal year the Association shall account for each member's pro rata share of the net proceeds of any pool closing during the fiscal year by payment in cash and/or retaining and allocating same to the revolving fund account of member as hereafter provided.

Notwithstanding any other provision of the By-laws of this Association or of any marketing agreement to which the Association is a party, this Association shall not make any distributions to member-patrons arising from the marketing of agricultural products delivered by such patrons, or make any advances upon such distributions, if such distribution or advance would cause the Association to fail to make timely payments of any monies due under the terms of any negotiable promissory note requiring payment within one year or less and issued, or payment of which is guaranteed, by this Association.

Section 7.06 - Advances

The Association may make advances against the net proceeds payable to members at such times and in such amounts as the Board of Directors shall determine. In the event that the amount of advances exceeds the amount of net proceeds determined to be payable to such member, the member agrees to repay the amount of such deficiency on demand. The Association may enter into agreements with members providing for the deferred payment of all or a portion of the advances against net proceeds otherwise payable to the member.

(Continued)

Section 7.07 - Remedies for Member's Breach

(a) In the event that any member shall fail to sell and deliver to the Association any of the walnuts covered by the marketing agreement, such act will injure the Association and its members in an amount that is, and will be, impractical and extremely difficult to determine. In view of the foregoing, each member agrees to pay to the Association, upon demand, an amount equal to 50% of the market value of all walnuts withheld, delivered, sold or otherwise disposed of in violation of the terms of the marketing agreement.

(b) It is agreed that delivery by a member to the Association of walnuts not produced by such member while this marketing agreement is in effect constitutes a breach of the marketing agreement and will injure the Association and its members in an amount that is, and will be, impractical and extremely difficult to determine. In view of the foregoing, each member agrees to pay to the Association, upon demand, an amount equal to 50% of the market value of all such walnuts delivered by or on behalf of such member to the Association.

(c) The foregoing right to recover liquidated damages shall be in addition to all other remedies now or hereafter available by law, including, but not limited to, the right to obtain an injunction, and said remedies shall be deemed cumulative and not exclusive.

(d) If the Association institutes any successful action whatever by reason of a breach or threatened breach of the marketing agreement against any member, said member agrees to pay to the Association all costs, premiums for bonds, expenses and fees, including reasonable attorney's fees.

Section 7.09 - Termination of Marketing Agreement

(a) The marketing agreement with each member shall be for a term of five (5) years and shall automatically be renewed for successive terms of five (5) years unless terminated by either party as hereafter set out. Provided, however, that in order to achieve an approximately equal spread of expiration dates by years the Board of Directors may provide for shorter initial terms in accordance with the following general procedure:

(1) The Board may classify applicants by location, volume of production, quality of production, or any combination of these and other factors.

(Continued)

(2) On or before December 31, 1964, the Board of Directors may on one or more occasions divide the pending applications in each classification by lot into five groups, designated groups one through five. The initial term of the marketing agreement of applicants selected by lot to be in group five shall be five years, the term for applicants in group four shall be four years, the term for applicants in group three shall be three years, the term for applicants in group two shall be two years, and the term for applicants in group one shall be one year. All applicants shall thereupon be notified in writing, mailed registered mail to the address appearing on the records of the Association and the marketing agreement shall thereupon be deemed amended accordingly.

(b) The first anniversary date of a marketing agreement shall be February 28 next following the date of acceptance of the application for membership. The period from acceptance of membership to the following February 28 shall be regarded as a full year for the purpose of determining the term of the marketing agreement hereunder.

(c) Any member may elect to terminate the marketing agreement effective as of the fifth anniversary date (or such earlier anniversary date as may be determined pursuant to subsection (a) above), and on any fifth anniversary date after such initial anniversary date for termination, by delivery of written notice to the principal office of the Association during the period of January 1 through February 28 immediately preceding such anniversary date. In the event of delivery by mail, the written notice of termination of the marketing agreement shall be sent by registered or certified mail, return receipt requested. Written notice is deemed delivered only upon actual receipt thereof by the Association at the principal office of the Association.

(d) The Board of Directors may establish rules for release of a member from the future obligation to market walnuts produced on property as to which the member surrenders actual control of production by a bona fide sale or lease, provided the member notifies the Board of Directors as to any sale or lease in advance or within thirty (30) days after entering into such sale or lease and furnishes evidence satisfactory to the Board of a bona fide transaction which is not intended to evade the obligation of this marketing agreement, except as so released a member shall continue to be bound by this marketing agreement notwithstanding any such sale or lease.

(e) The Association may elect to terminate the marketing agreement with any member effective as of any anniversary date when the member has the right to terminate, by giving written notice to such member during the period of January 1 through February 28 immediately preceding such anniversary date.

(Continued)

(f) In addition to the right of termination in the preceding subparagraph, the Association may terminate the marketing agreement with any member simultaneously with any termination of membership pursuant to sub-sections (a) and (b) of Section 2.09 above, or at a time when the Association elects to terminate all existing agreements for marketing walnuts.

#### Section 8.09 - Lien and Right of Offset

The Association shall have a prior lien against any net proceeds or credits standing on the books of the Association in favor of any person, with the right to offset any indebtedness to the Association by such person against such net proceeds or credits at any time. Such right of offset shall not be barred by the running of any statute of limitation against the indebtedness to be offset. Such right of Association may be subordinated by appropriate written instrument to a loan or loans made to any member to the extent authorized by the Board of Directors.