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Testimony Before the Committee on Oversight and Government Reform

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Hearing on Regulatory Impediments to Job Creation

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DRAFT TESTIMONY OF MARK MURAI

At Congressional Field Hearing:

Committee on Oversight and Congressional Reform

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Good morning Chairman Issa and Congressman Farr.

My name is Mark Murai. I am a third generation farmer. Our family farm is located in Oceanside, California. For the past five years I have served as the President of the California Strawberry Commission. The Commission represents all of California's strawberry shippers, processors, and more than 500 family farmers.

The average California strawberry farm is 73 acres. California strawberry farmers are able to achieve the highest yield in the world on these small farms that dot California's coast. Collectively, California strawberry farmers grow over 88% of the strawberries for the nation and create over 70,000 on-farm jobs.

In other words, California strawberry farmers are the most efficient strawberry farmers in the world, able to grow the most fruit per acre than any other strawberry farmer in the world. This hard work ethic is what also supports California farmers to comply with over 70 laws and regulations.

Many of these government requirements originate with U.S. EPA. For example, U.S. EPA has one of the toughest pesticide registration programs on the globe. And, after a product is registered by U.S. EPA it is reviewed again by the California EPA's Department of Pesticide Regulation.

Example 1: Consultation Process and National Marine Fisheries Service (NMFS)

As part of the registration process, U.S. EPA includes label requirements to ensure that endangered species are not harmed. This process was guided by regulations, called the "counterpart regulation."

However, in 2001, an activist lawsuit set aside the counterpart regulation because of a procedural error. No actual harm was determined, only that there was an error in the process. The court ruled that EPA should have conducted an Environmental Impact Study to issue a regulation.

As a result, instead of U.S. EPA conducting one comprehensive review, now U.S. EPA reviews the data, makes a decision, and then sends the data to the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for them to review the data again. These reviews are issued in what is called a biological opinion. The result is yet another regulatory process, and for California now we have three reviews for the same product.

However, the biggest problem is that the National Marine Fisheries Service, by their own admission, has no expertise in pesticides. As a result, their reviews are adding as much as a decade to the process.

For example, the 2001 lawsuit resulted in 54 pesticides needing to be reviewed by the National Marine Fisheries Service. It is now 10 years later, and the reviews are not done.

Unfortunately, this is not the biggest problem. The biggest problem is that because the National Marine Fisheries Service does not have the appropriate expertise, their biological opinions contain a wide variety of errors, including simple factual errors.

Let me read to you several quotes from letters by U.S. EPA, the California Department of Pesticide Regulation, and the Washington Department of Agriculture.

Errors by the National Marine Fisheries Service

The following examples are comments about the National Marine Fisheries Service recent series of biological opinions to determine if any of 54 pesticides have a negative impact on pacific salmon that run in rivers from Canada to Mexico.

Washington State Department of Agriculture says:

"Since 2003, WSDA has invested significant financial and technical resources in the collection of monitoring data from salmon-bearing waters in Washington State. Water samples are collected weekly from 13 salmon-bearing streams during the typical pesticide use season. The monitoring locations sampled represent various agricultural areas and one urban area in Washington State. Over the course of six consecutive years of sampling only one detection of malathion in 2004 exceeded the no-jeopardy concentration of 1.122 ppb. At a minimum, we believe this indicates current label requirements are protective of water bodies similar to those currently monitored." (WSDA Comment letter 9-25-09)

California Department of Pesticide Regulation says:

"DPR remains concerned that the deficiencies identified in our September 15, 2008, comments on NMFS' "Draft Biological Opinions Under the Endangered Species Act, Issued for Chlorpyrifos, Diazinon and Malathion" appear to have been repeated in these new BiOps[1]" …."like the previous BiOps, these do not consider the best available data. For example, a review of California's surface water monitoring databases show that out of 44,641 water analysis for nine pesticides included in this BiOps, less than one percent of the samples exceed the proposed maximum concentration limits (MCLs). Moreover, the majority of exceedances were from pesticides that are scheduled for cancellation.

[1] BiOp related to use of products containing azinphos methyl, bensulide, dimethoate, disulfoton, ethoprop, fenamiphos, methamidophos, methidathion, methyl parathion, naled, phorate, and phosmet.

This data suggests that not only are the proposed Reasonable and Prudent Alternatives (RPAs) not necessary, but that the NMFS' modeling may have exaggerated the adverse risk of these pesticides to salmonids."

"Additionally, these BiOps continue to lack transparency. For example, the RPA section establishes a process to determine the adequacy of suggested risk reduction measures without identifying the criteria or data that will be used. Thus, NMFS has made it is impossible to determine and meaningfully comment on additional risk reduction measures described in Element 3."
(DPR Comment letter 7-16-10)

U.S. EPA says,

"Use of these pesticides has been ongoing for decades and has actually declined over the past several years. If the threatened status of the species has not changed appreciably during this considerable period, it would appear to provide some indication that use of these pesticides are not appreciably reducing the likelihood of both survival and recovery… – which is the standard for jeopardy – yet the Draft makes no effort to address this empirical evidence. Additionally, the Draft makes no mention of the fact that agriculture [sic] chemicals are secondary stressors and therefore are considered to be a minor factor in species survival relative to other factors."

"The Draft lacks a level of transparency necessary for EPA to understand NMFS' rationale for its opinion that any of these pesticides will jeopardize the continued existence of any of the species at issue. It is generally not transparent as to what methodology NMFS employed to collect information…. It is also unclear how NMFS undertook specific analyses and how NMFS integrated or reconciled apparently conflicting information."
(EPA Office of Prevention, Pesticides and Toxic Substances, September 15, 2008)

How does this impact Agriculture?

Based upon these erroneous studies, National Marine Fisheries Service will now require buffers ranging from 125 feet to 1,000 feet. These buffers will result in hundreds of thousands of acres being taken out of production or suffering from severe infestation.

Additionally, this year the Center for Biological Diversity filed the same type of procedural lawsuit on 300 pesticides listing 200 species. If it takes National Marine Fisheries Service over a decade to evaluate 54 pesticides for one species, imagine how long it will take to evaluate 400 pesticides for multiple species located throughout the U.S. At the current rate, it will take over 500 years. This does not help farmers or fish.

Example 2: U.S. EPA Ozone Standard

As you know, California's mountains act to capture natural and man-made organic compounds that evaporate into the air (volatile organic compounds – VOCs) and emissions from cars and factories (nitrous oxide – NOx). California's sunny climate then causes these emissions to form ozone. In the 1990's U.S. EPA required states to develop "State Implementation Plans."

As part of these plans, California farmers were asked to do their part to reduce VOC air emissions from organic and conventional pesticides.

In response, California strawberry farmers have implemented a variety of new technologies that reduce VOC air emissions. More specifically, since the 1994 SIP was approved, strawberry farmers have reduced VOC emissions by 30% - 50%, (depending on each individual farm).

Ten years later the Ventura Air Pollution Control District issued a press release stating, "Best Air On Record," and noted that Ventura County had met the U.S. EPA one-hour ozone standard for three years in a row and was now in compliance.

Instead of supporting this accomplishment, activists sued the State of California for failing to implement a separate regulation. Unfortunately, lawsuits don't always make sense.

As more information emerged about this issue, it made less sense. According to the California Air Resources Board emissions inventory, approximately 40% of the VOCs in Ventura County are from naturally occurring sources. Thus, total VOCs from pesticides are less than 4% of all VOCs in Ventura County.

Moreover, the inventory shows that 46% of these emissions are from methyl bromide and U.S. EPA has previously stated that, "methyl bromide would qualify as VOC-exempt under our current policy," (Jeffrey R. Holmstead, November 13, 2003).

After removing methyl bromide from the inventory, the actual VOCs from pesticides are less than 2% of all VOCs in Ventura County.

U.C. Davis Professor, Dr. Peter Green, has been funded by the State of California to conduct independent scientific research about reactivity of NOx and VOC. He testified to the Air Resources Board that, "organic gases react photochemically, however they do not react equally. Methyl bromide has such a very, very low reactivity that it would be reasonable to exclude it from regulation as a ground-level-ozone precursor. Furthermore, ozone production is strongly dependent on nitrogen oxides, NOx, which must also continue to be reduced. This is especially true in air basins under conditions where NOx is the limiting reagent, and where natural background VOCs limit our ability to reduce total VOCs."

In other words, there are so much naturally occurring VOCs, that even if you eliminated all VOCs from agriculture, it would have no effect on ozone, because the amount of ozone that will be created is based upon emissions from cars and factories from burning fossil fuels.

Unfortunately, after 16 years of having this type of information, U.S. EPA continues to impose obsolete requirements from 1994. And, after 14 years, U.S. EPA continues to ignore the petition to take methyl bromide off the list of VOCs.

Example 3: Critical Use Exemption

For my last example, I would like to briefly discuss the Montreal Protocol and restrictions on methyl bromide. As you know, methyl bromide is a highly efficacious fumigant. It has been used for a half-century for more than 100 crops, ornamental nurseries, and forests to clean the soil before planting or as a post harvest treatment.

However, an international treaty, called the Montreal Protocol, has phased-out over 90% of agricultural uses of methyl bromide. To date, methyl bromide alternatives have been identified for nearly all crops. Strawberries are the largest exception. Australia, Israel, Italy, Japan, Spain, and numerous other countries all requested Critical Use Exemptions for strawberries.

Within the past three years EPA has approved substitute products. To clean the soil, they have approved methyl iodide. For post harvest uses, they have approved sulfuryl fluoride. As a result, EPA has reduced the amount of methyl bromide CUEs by more than 50%.

Now, after reducing the availability of methyl bromide, U.S. EPA is taking comment on canceling both of these substitute products: methyl iodide and sulfuryl flouride.

Today, as you hold this hearing, U.S. EPA taking comments on its proposed decision to cancel sulfuryl fluoride for post-harvest treatment. (EPA-HQ-2005-0174)
Similarly, U.S. EPA is taking public comment on a petition to suspend and cancel methyl iodide. (EPA-HQ-OPP 2010 0541)

We are concerned that EPA has reduced the CUEs for methyl bromide by 50% because it said that new alternatives were available, but now that they have taken action to cancel those alternatives, EPA has failed to take any action to restore the CUEs.

These are just three examples of the impacts of regulations on agriculture. I would be happy to answer any questions at this time.