

Richard Smith
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Re: House Oversight and Government Reform Committee—Salinas, California

Hearing: April 19, 2011

I am a grape grower in the Salinas Valley. I farm 3,000 acres on 17 properties from Gonzales to Bradley (70 miles). My career includes dedicating a lot of time and effort as a political voice for agricultural issues. My highest priorities have been 1) research, education and extension, 2) water issues and 3) technology in agriculture—physical, chemical and biotechnological aspects of our business.

Legislation is the portal through which good ideas should become part of a society's protocol. Unfortunately, in my opinion, the dysfunctional system of legislation and regulation that exists today is a problem for productive citizens.

Legislators presumably intend to codify good ideas. Unfortunately, most legislation is followed by regulatory fiats by unelected boards and/or staff; these subsequent “rules” often complicate and/or compromise the original good intentions.

Regulations and enforcement of regulations and the ensuing court cases that address those regulations actually create new law—these rules and interpretations of them complete a ‘dysfunctional legislative system’. As agricultural producers, we deal directly with the consequences. Generally while we are busy doing our job, advocacies use the legal system to modify well-intended laws into onerous regulations before we farmers pay any real attention to this insidious process.

The Endangered Species Act is an example of a hypothetical good intent gone awry. I presume that the ESA has a general intent to mitigate the loss of diverse species by identifying plants and animals at risk of extinction and providing mechanisms to mitigate those potential losses. However, the regulatory system developed to enforce the ESA has become an expensive barrier to almost any development. The ESA “rules” become “tools” to stop a project. Any (perceived) loss of habitat is a reason to stop a (land) use or an activity. This is the case even if there is no significant impact—even if a relatively unlimited habitat remains available to the species in question.

A local example might be the concern about maintaining the red-legged frog habitat in the Salinas River in the face of the need for streambed maintenance. Work planned to sustain the unimpeded flow of the main stream—to avoid floods—does not need to (and probably does not) impact significantly the available “habitats” of this frog species along 170 miles of the Salinas River and its tributaries. However, it is one of many ESA issues that could protract the process to get appropriate ‘permits’ to pursue the maintenance task. This should not be the intent of the ESA law or “rules”.

In fact, Army Corps of Engineers, Environmental Protection Agency, National Marine Fisheries Service (NOAA) and four state agencies all have a role in the approval of this maintenance task.

As I write notes for this testimony, it seems to me that the Salinas Valley agricultural community is wasting time and money asking permission to do a responsible job of managing our environment with stream maintenance and good environmental stewardship. We could modify the EPA “rules” if we successfully SUE the Monterey County Water Resources Agency for the substantial risks created by the changes in the river environment caused by the operation of the dams. We would probably have to qualify the commercial farmer as the endangered species to make this strategy work!

Another federal regulatory bill—The Clean Water Act—has many other significant issues where I believe that federal authority over land uses has extended way beyond the intended venue of “navigable waters” of America. Navigable waters, vernal pools, cut and fill operations, cultivation, drainage and a number of other “terms”—have been interpreted and reinterpreted by the Army Corps of Engineers, EPA and courts and the consequences of these interpretations keep lawyers employed almost without a break. Amendments to this bill have been back to Congress with the intent to authorize additional federal regulation. This Act has far reaching consequences.

In California we have written the Porter-Cologne Act to further the presumed good intent of the Clean Water Act. Now state regulators (staff) are proposing fiats that go beyond the actual ability of the nation, state, county or individuals to fulfill. New proposed regulations actually are scientifically unachievable.

Nitrates—Regarding the primary focus of the staff fiats; I would suggest that the Congress and their liaison to EPA develop an expertise in manufactured reactive nitrogen (ammonia that becomes nitrate). We use nitrogen at rates about 50 times the amount found naturally in our environment. This manufactured product has only been a part of our environment for about 100 years (Nobel Prize 1918). During that time it has become responsible for about 40-50% of food production around the world.

Worldwide, it is not used efficiently nor is it well-managed in the environment. Efforts to improve management of the nitrogen materials have improved over the past 50 years. However, there is still substantial margin for improvement around the world.

The United States has the highest rate of productivity of agricultural products in the world. Reactive nitrogen is an important reason for that improvement between 1940 and 1990. Today the amount of applied nitrogen material (fertilizer) per acre is being reduced by improved technology, better measurement of plant requirements, better measurement of available soil resources, better measurement of plant nutrient levels, better application methods and better formulations of materials. Additional efficiencies are motivated by the fact that there are increased costs to achieve these improvements.

EPA and many worldwide organizations have established “standards” for nitrate in water. Regulation and enforcement needs to provide safety and environmental stewardship while dealing with the changed “real” conditions in our environment.

The legislatures and the regulators need to know that throughout the world the level of ambient nitrogen compounds will never go back to levels known early in the 20th century. Regulations need to be modified to address the nitrogen requirements for food production in the modern world. They also will have to provide for 1) the safety of humans and other life, 2) the quality of soil and water resources and 3) the sustainable practices that will mitigate impacts to the character of our environment. New legislation will have to address the achievable improvements that can be developed with improved stewardship of the reactive nitrogen compounds. Outlawing nitrogen compounds and their use is not a sustainable solution. The changes of levels of nitrogen measured in our environment are consequences that come with the benefits that have been achieved and enjoyed over the last 100 years.

Reference:

<http://www.physics.ohio-state.edu/~wilkins/energy/Resources/Essays/ngeo325.pdf.xpdf>

I appreciate the opportunity to share some views regarding the impact of our government on our daily lives. It is frustrating for most of your constituents to live comfortably knowing that “government” is going to try to improve our situation again tomorrow (and every other day). The hearing process generally brings individuals with “polar” opinions to the podium. With short “sound bites” we tend to escalate criticisms of each other’s opinions or persona. I appreciate that change is generally slow—it mitigates political expediency. I am concerned that even the changes that I would favor could cause unintended consequence if initiated too quickly. Systems and economies and lives develop around good and bad laws, rules and regulations. Change government slowly and evaluate the results of change to determine to continue on one path or another. We constituents are not well-served by a cavalier government that vacillates between different visions of how to proceed to govern.

Comments submitted by,

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