



Testimony Before the U.S. House Oversight and Government Reform Committee

Field Hearing: "Regulatory Impediments to Job Creation: Assessing the Cumulative Impact of EPA Regulation on Farmers"

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Good Morning. Chairman Issa, [Ranking Member Cummings] and members of the Committee. Thank you for the opportunity to appear before you today.

This morning I'd like to shine a light on the impact and consequences of lawsuits brought against the Environmental Protection Agency (EPA) and other federal agencies by environmental groups that are reaping taxpayer-funded attorney's fees and resulting in a de facto rule making process that is harmful to farming and of questionable benefit to the environment.

The system is broken and Congress can fix it.

Many of these lawsuits never actually go to a full trial; many are never appealed by the federal government, and some of those that do receive an unfavorable ruling by a judge give interveners no choice but to sign the settlement agreement to ease the onerous and outrageous consequences of the settlement.

Often, when nonprofit environmental organizations sue the EPA and other federal government agencies such as the U.S. Fish and Wildlife Service or the National Marine

Fisheries Service (Services) for failure to comply with the Endangered Species Act, it isn't unusual for the federal government to settle the suit and avert a full trial.

As the EPA continues these practices and pays the associated attorneys fees which run into the hundreds of thousands of dollars per case, the legal questions associated with environmental laws such as the Endangered Species Act are never adequately examined and answered and worse, the settlement agreements put in place have adverse economic consequences for agricultural businesses and jobs with no evidence of protecting endangered species.

This is a defective way to make public policy as EPA and the environmental groups that sue it often work out the details of these settlement agreements without the farmers and agriculture industry at the table.

To comply with the settlement agreements or injunctive orders from the court, the EPA and other agencies impose regulations without meaningful input from stakeholders, without considering the economic impact on the nation's farmers or workers, and with little regard to the intent of Congress when the law was passed.

As multiple lawsuits are settled and the resulting biological opinions are issued from U.S. Fish and Wildlife Service or the National Marine Fisheries Service (Services), the process and schedule leave little time for engaged input by the impacted stakeholders.

A top concern to agriculture in California and elsewhere is the increasing number and adverse impact of these lawsuits involving the Endangered Species Act. While this committee is familiar with the struggle between farmers and federal fish agencies in California for water, I'd like to make the committee aware that there is also increasing negative impact on agriculture's use of crop protection tools such as pesticides.

Please know, we are not seeking pesticide deregulation - far from it. Farmers are incentivized to use the least amount of pesticides needed to produce a crop. Pesticides cost a lot of money. Overuse harms the land and its productivity.

But all crops need pesticides, whether conventional or organic, just as the human body needs medicine when it is attacked by harmful bacteria and viruses.

Rather, this testimony seeks to shed light on a broken regulatory system, one that has been hijacked by the interest groups on one side in a manner that keeps the interest groups on the other side -- agriculture -- out of the process.

That is fundamentally wrong and contrary to every tenet of our regulatory system. In these settlements, agencies are essentially putting in place restrictions and stipulations in a manner that replaces or overrides the transparent and public rulemaking process.

This not only side-steps the authority of Congress, it also results in environmental regulations that are often redundant, humanly impossible to meet, expensive and of questionable benefit to either endangered species or the environment.

It's an underhanded way of changing the rules on the nation's farmers that circumvents Congress and stakeholders.

***The Mother of all Lawsuits**

Currently, the Center for Biological Diversity and the Pesticide Action Network North America are suing the EPA because they say the agency again is violating the Endangered Species Act when it registers pesticides under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

According to the more than 400-page court document detailing the complaint, the environmental organizations say the EPA is failing to adequately consult with other agencies regarding the effects of nearly 400 EPA-registered pesticides on more than 200 endangered and threatened species nationwide.

The court documents list over 27,400 different combinations of active ingredients in pesticides and species, each of which could require consultation.

This case could cause severe economic harm and loss of jobs to tens-of-thousands of farmers, and cripple their ability to grow America's source of food and fiber on more than 112 million acres of farmland across the country, not just in California.

As this case heads toward a potential settlement, we recognize that the process is leaving out the voices and rights of people and industries with a stake in the outcome—those who will be expected to devise and pay for remedies and mitigation of a situation which may or may not be able to be remedied.

As the Obama administration has broadcast its commitment to accountability, this process should follow that edict and ensure that Section 1010 of the ESA Amendments of 1988 be adhered “to minimize the impact to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators.”

We ask this committee to investigate this process and recommend corrective action or legislation.

**This lawsuit was dismissed in January, 2013.*