

SENATE FOOD & AGRICULTURE COMMITTEE

Evaluating the Sufficiency of CDFA's LBAM Environmental Impact Report: Is It Supported by the Facts?

Senator Dean Florez, Chair

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SENATOR DEAN FLOREZ: We'd like to thank everyone for coming this morning. I particularly know that people traveled some significant distance to be here, and I very much appreciate that.

As you know, this is the public process. We are very interested in trying to get some more discussion, dialogue, and understanding of this EIR process. More importantly, we would like to build a record—the official record—today and a transcript that we can transmit, as well, over to the process at CDFA.

I can tell you that the original purpose was to evaluate the sufficiency of the Environmental Impact Report, as drafted by CDFA. So, this is kind of the first note of, first, let's look at the EIR process, and let's look at the document itself and try to get some understanding of the eradication methods as proposed in the EIR.

I can tell you that this committee does have oversight over CDFA. We had lots of questions regarding the EIR, as produced by the department, and some related policy questions—some big policy questions—on eradication efforts in its totality in California. However, we were informed by CDFA that they have been counseled against participating in today's hearing, citing concerns about potential litigation regarding the EIR process itself.

I can tell you that we always keep it in mind when we have threats of litigation that are, in some sense, some determining factor in the course of where government moves. But I can tell you that it's certainly true, when that threat serves to limit conversations between government, that's disappointing; when we can't have a dialogue between the agency that puts out an EIR—that is ultimately

the decision-maker of the EIR—and you have an oversight committee in the Legislature whose job it is to oversee the actions of that agency and they, in essence, hide behind the veil of litigation. I've been in this Legislature, in and out, since 1987—that's twenty-plus years—and we've always found a way to have folks testify, and they simply have to say, in many cases, *I'm not privy to speak on that point*, and we move on to other questions. That didn't occur today and it's very disappointing.

I believe, as most of you know, that government should be open and transparent and true dialogue should occur, particularly in the halls of this Capitol. And I do believe that holds true for the EIR process itself. The EIR process should be as transparent as anything. And so, to have that discussion here today would have been a great process to have as this EIR is now out.

I can also tell you that we will continue to monitor the EIR process. We will continue to monitor CDFA's activities as it relates to LBAM. And we will not hesitate to hold further hearings in order to hear from CDFA in terms of its final actions.

So, let me just notice right now, on September 28th, when all is said and done and the EIR is closed and CDFA is about to make its decision, we will have a hearing prior to that, because we still want to understand what it is that the Secretary is going to be looking at in terms of judging all of the comments before it and what he found that had value and what he felt may have not been valid. I think that's important prior to a decision. So, we're going to go through this exercise one more time with CDFA. We thought this would be a good venue, as indeed, they are out taking public comment throughout California.

I can tell you that getting some public comment today, again, will be extremely important. We look forward to getting your comments on the record, and we would, of course, like to submit that as the official record of a Senate Food and Ag Committee hearing, duly noted in this Capitol, and forward that on to the Secretary and to the Department of Food and Ag.

So, with that, let's go ahead and begin, if we could, with Panel 1. We'd like to have Roy Upton and Dr. Daniel Harder, Dr. James Carey, and Derrell Chambers. If you could all please come up, in however order you'd like to proceed.

Of course, we'd like to start in the order that you would like to move on. And then we'll call up some more folks as we move on.

MR. ROY UPTON: I guess I'll jump in and say good morning and say thank you for allowing us to be here this morning.

My name is Roy Upton. I represent a citizens public health and environmental organization known as Citizens for Health. We have 90,000 members nationwide; 8,500 members in California.

When we initially opposed the aerial spraying, it was based on a philosophical basis that human populations should not be sprayed with untested pesticides, especially for an alleged problem that had not yet been established, i.e., the light brown apple moth. Between the various cities that were sprayed, there was a potential exposure to 1.2 million people between Monterey and Santa Cruz. And CDFA proposes to do this for three or four days every month, for up to six or seven years. They said it would take several years in order to do this. They're also proposing to do this in the entire Bay Area and many cities in California outside of Santa Cruz and Monterey.

Literally, within days of the spraying—the first spraying in Monterey—we started to receive phone calls and emails regarding human adverse events. This included a near fatality of an 11-month-old boy named Jack Wilcox, in Monterey, who had never had respiratory problems before, and within the next day, the very next day after the spraying, started developing respiratory symptoms; and by the third day after the spray had to be admitted to the emergency room with severe respiratory failure, literally his eyes rolling back into his head and almost dying. Not one person from the state or from the county ever contacted Mr. and Mrs. Wilcox to talk about their son. Several other children in Santa Cruz and Monterey experienced similar, though not as potentially fatal, reactions as did Jack.

Literally, on the environmental side, seabirds literally were drowning and dying by the droves, washing up on the beaches around Santa Cruz, starting on the very morning after the spray. Dead land birds were being found in people's backyards. One gentleman in Santa Cruz reported thirty of them just in his neighborhood. He had lived at Pleasure Point for thirty years and never seen anything like that, but within two days after the spray, these land birds were all

over his neighborhood, dead, without any other reason. People in Monterey lost dogs and cats, goats. One woman who raised rabbits in Monterey lost entire litters—that had never happened in twenty years of her raising rabbits—literally the morning after the spray. All of these were from unexplained causes.

Now, most of these went uninvestigated, except for the birds. The official cause of death of the seabirds was “red tide,” but the same yellow-greenish oily stuff that was on the dead seabirds was also on some of the pets that were exposed, or in people’s planter boxes, on their decks, on their cars. So, we have no idea how red tide could have ever gotten into people’s backyards. But this was the official cause of death given for the seabirds.

Within a few weeks, we had gathered more than 450 human adverse events, mostly respiratory in nature, which would be predictable from aerial spraying. And we reported at least 650 dead seabirds. That was actually the official state tally, with 650; and when you look at the scientific literature, when you find 650, it’s usually representing only 10 percent of what actually occurred as what’s not found, of the dead things that are not found.

Again, I highlight these because, contrary to popular opinion, according to this EIR, aerial spraying is not off the table. They’ve said they’ve limited aerial spraying to rural areas, but most of us live in rural areas. My niece and nephew and their new baby live in a rural area. This is not acceptable to us. Farmworkers live and work in rural areas. This is still not acceptable to us.

Citizens for Health is also a science-based organization. We try very hard to determine whether or not there is cause for our philosophical belief and whether these programs should be opposed or supported. Regarding LBAM, we contacted LBAM experts worldwide: in Australia, New Zealand, Hawaii, United Kingdom; anywhere where LBAM was endemic or naturalized. We found people in farms, entomologists, government officials in forestry and in agriculture.

The response we got was almost unanimous: *Why are you asking us about such an insignificant insect? This is not a big problem to us.* A few months back, when CDFA alleged damage to raspberries in Watsonville, they said 20 percent to 50 percent of their crop was lost. We contacted raspberry growers in Australia and New Zealand, and again, unanimously the comment was, *This is no problem to us*

in raspberries whatsoever. We can talk about other pests but not LBAM with regard to raspberries. One reviewer actually said, Don't waste your time calling anyone else. They'll tell you the same exact thing.

The biggest thing that we brought to the table is we reviewed published literature that made any reference to LBAM, going back for more than seventy years. It was, again, consistent. LBAM is a very minor insect that only becomes a pest of significance when pesticides are used excessively and destroy the natural predators that would typically keep LBAM at bay. This is consistent throughout the literature.

There was also relative consensus that even when LBAM populations are high, you rarely see any damage that's done to any crop. And this is similar to the many native leafrollers that we already have native in California. They're superficial. The damage that they do is transient. It's minimal; it's very rare; sometimes—most of the time—nonexistent and easily managed in agricultural systems. So, of little economic and biological consequence, contrary to what we've been told.

Government officials and representatives of fruit growing organizations in those same countries stated that they neither had any problem managing LBAM nor shipping their products internationally. And this is the basic premise of the EIR: that we will lose revenues because we can't ship our products. But this is not a problem for any country where LBAM is endemic.

We also contacted people in Hawaii, where LBAM has been since at least 1896. They never, until the USDA quarantines were issued in 2007, never had any problem shipping anywhere in the world due to LBAM, and they never had a find of LBAM in any crop, nor were they ever quarantined for any LBAM in a crop, nor did any farmer ever report any damage to any crop due to LBAM. And there's never been a report of any damage to native forests or native flora due to LBAM. And again, this is all contrary to what we're told by CDFA.

This statement actually is confirmed by USDA records that show that in New Zealand, 99.9 percent of their produce can be shipped to the U.S. despite having very strict quarantines against LBAM, which means that they easily

manage it as a crop quality issue. And that's where we think this should go, is as a crop quality issue.

Right now, a \$3 million ad campaign is telling Californians that LBAM threatens our food supply, our precious redwoods, oaks, and cypresses, and even our way of life. This is what the ads are saying. We reviewed numerous formal insect population surveys of LBAM in forests. . . or insects in forests where LBAM is naturalized, including all the countries that I mentioned before. And again, not one of those surveys lists LBAM as any kind of problem to native flora; though again, they tell us that this is going to wipe out our redwoods and our cypresses and oaks and even endangered species in the United States.

We contacted horticultural experts and officials in those countries. Again, the response was exactly the same: *LBAM, to our knowledge, has never been a problem in any of our native forests*, and this is even in New Zealand and Australia where LBAM is native. Natural predators keep LBAM at bay, and there's no risk and no threat to native flora whatsoever.

Two California courts ruled that there was no evidence of an emergency due to LBAM that USDA or CDFA could produce in justifying their emergency. They came to this Legislature saying that there was a dire emergency associated with LBAM and that they needed to do something very quickly because they only had a small window in which they could eradicate LBAM. They said at that time that window there was three to six months; now it's up until 2015.

Three years ago, USDA's LBAM Technical Working Group believed that LBAM could be eradicated from California, but their opinion was predicated on three basic principles: 1) that LBAM was a recent introduction and that current populations were very small and localized; 2) that eradication was justified based on projected crop damage and restriction of markets due to trade quarantines; and 3) establishment of LBAM would result in an increased use of pesticides in agriculture and home use. Those were the premises on which the LBAM Technical Working Group of the USDA said that LBAM could and should be eradicated. Well, three years later, we know there's no support for any of these points; none at all.

What CDFA has not told this Legislature and the California public is that LBAM is not a recent introduction to the U.S. USDA has been intercepting LBAM at points of entry into the U.S. since 1984. But they also have not told this Legislature that at the time that the TWG meeting occurred, according to trapping data of CDFA, there was only a single find in 1,441 traps. TWG members didn't have any idea that, in reality, millions of LBAM occupied a span of 23,000 miles across California, which is where it is today. And CDFA will tell you that LBAM populations are increasing and spreading, but that's not really the case. What's really spreading is their trapping program. The more traps they put in more places, the more LBAM they find. It's not that LBAM is growing; their trapping program is becoming more efficient.

The TWG—the Technical Working Group—specifically noted that feasibility and probability of a successful eradication was greatly lessened if there were significant expansion of the known infested areas. At that time, they knew that LBAM existed in Santa Cruz County and in San Francisco County. They didn't know that it was across fifteen different counties in California. Thus, the original premise that eradication can succeed, because LBAM was a recent introduction, or based on existence of very small and localized populations, is no longer supported. We know that three years in hindsight.

As evidenced by international trade, products from Australia, the European Union, Hawaii, New Zealand, the U.K, LBAM is easily and cost-effectively managed as a crop quality issue in those countries, and it's the USDA quarantines that are hurting California farmers, not really LBAM.

Regarding the other premise—home use of pesticides—before the USDA started their \$3 million campaign just recently, people at home had no idea that they had to be afraid of the little moths that were flitting around their light bulbs. Now, if home pesticide use increases, it will be not because of LBAM but because USDA and CDFA have put the fear of this moth of mass destruction into the minds of Californians who think they have to take a can of Raid and spray their porch lights.

Now, there are many specific criticisms we can highlight with the EIR itself, and we'll do this in written comments. However, the fact that the very premise for

the LBAM eradication program is lacking makes all else meaningless, in our opinion. One thing this committee should know, that the company hired to conduct this independent environmental review—which is Entrix—publicly stated that they would be getting most of the information for this Environmental Impact Review directly from CDFA. I don't know how that constitutes an independent review, but it does not constitute that for us. There is no independence in this review whatsoever, in our opinion.

Now, in conclusion, Citizens for Health would like to formally ask this Legislature to consider the following.

One is to convene an oversight hearing to give the public and independent scientists a forum to present a broader representation of the science than has been allowed thus far.

Two is to have the California Legislature commission its own independent review of LBAM and eradication feasibility through the University of California system. If we have to raise funds in order to do this, we will, in the public. That's what we've been told thus far, that California has no money. We'll go out and get it if we can and if we need to.

Three, request from USDA, the LBAM Technical Working Group, their formal opinion of whether they continue to believe that LBAM can biologically be eradicated from California, considering its occupation over 23,000 square miles, and to provide documentation if they believe that it can still be eradicated. I'll tell you now, I would be willing to bet that most of those members no longer feel it can be eradicated, but they haven't been asked that opinion for at least two years, to our knowledge.

Four, request from CDFA precise numbers of how much actual economically significant crop damage has occurred in California, not by the USDA quarantines but directly and conclusively linked with LBAM damage itself. You will find none. In one field in Watsonville, you will find three berries that may have been eaten by LBAM out of millions of berries. And that's it.

Lastly, direct CDFA to cease all participation in the LBAM eradication program; no labor, no general funds, no infrastructure, not even another photocopy. If this is an important enough program for USDA, let them take it

over. Let them take over the management, the administration, and the implementation of the program, and if they do, we'll take the fight to them in Washington and leave you guys alone here.

In closing, I want to say thank you and appreciation for the opportunity to be able to present our views here. I'm happy to field any questions that you might have, and I'm ready to defend any position or point that we've made today; or, if USDA were to challenge anything, I can provide documentation for everything that I've stated today and would be glad to do that.

So, thank you.

SENATOR FLOREZ: I have some questions for the panel after, so let's keep moving through.

Why don't we hear from Dr. Daniel Harder.

DR. DANIEL HARDER: I want to thank the chair and the committee for allowing us an opportunity to speak on this issue.

This is a professional and personal issue for me, and I've followed it from the beginning. I'm disappointed that, once again, CDFA has elected not to attend a public hearing on LBAM. They claim they welcome an open and honest debate on the scientific foundations of the program from the beginning; yet, they've never given us the opportunity to receive answers to our many questions.

Based on my knowledge of the literature, firsthand experience with LBAM and leafrollers in California and in New Zealand, and having conversations with many scientists with decades of experience with LBAM in New Zealand and Australia, I conclude:

1. That the justifications for eradicating LBAM from California have not been presented or supported by the science or modern experience.
2. There is little chance that LBAM could be eradicated by any method. It is already naturalized in California, and its known distribution is widespread; as Roy mentioned, 23,000 square miles over fifteen different California counties. And,
3. There's no need to eradicate LBAM in California, as it's considered a minor pest of little concern and consequence. Modern methods exist to effectively

control LBAM in agriculture to zero tolerance levels to meet any export or distribution requirements.

The collections of the University of California, Santa Cruz Arboretum, which I am the director of, are unrivaled in the U.S. for its size and diversity of plants from Australia and New Zealand, where LBAM is native and where it's been introduced. For more than forty-five years, leafrollers have been controlled. . . we have not tried to control them there, and we have never had enough damage to warrant any kind of pesticide application for any leafroller, including light brown apple moth.

When looking at the Draft EIR, and the charge of my testimony to look and assess the adequacy of the Draft EIR, one of the public's main concerns and requests were for CDFA to clearly show and present evidence in supporting the necessity to eradicate LBAM. CDFA has never provided a review of the literature nor presented evidence regarding the threat posed by light brown apple moth, the need for eradication, and the likelihood that eradication can succeed. The entire premise for the program has not been provided by CDFA, and what has been provided is based on speculation without scientific reference or peer review.

The Draft EIR states repeatedly that the light brown apple moth is spreading in California. There is no proof to this statement since trapping only began recently, and to track spread, comparable annual information is necessary. Trapping by CDFA and USDA is simply uncovering existing populations, as Roy stated. Trapping showing that LBAM is widespread in California confirms this.

The Draft EIR continues the misinformation regarding LBAM and its damage in agriculture and natural forests. Overstating and focus on recent minor damage and using this minor outbreak involving LBAM and native leafrollers is propaganda. There simply is no report of damage from LBAM to native forests anywhere in the world, and the Draft EIR relies on speculation alone to make this claim. Just because LBAM can host on a plant does not mean LBAM can ever decimate it.

The no-program alternative is based on the premise that private landowners will increase the use of pesticides due to LBAM, causing more environmental damage than the proposed treatments. This no-program alternative is fear-

mongering and based solely on internal memos by a CDFA staffer who happens to be the LBAM program manager—Robert Dowell—and who is also the preparer of the Draft EIR. These memos are not peer-reviewed, and they contain unsubstantiated claims and very few references.

Our petition to reclassify the light brown apple moth provides the comprehensive review of the literature and moderate consideration of its effective management. CDFA relies on their own scientists and publications, many by CDFA personnel, to justify the policy for eradication, while science and the experience in California and worldwide continues to verify LBAM remains a minor pest and is easy to control. It is also impossible to eradicate, and there's no need to eradicate it. The entire program of CDFA is not based on science; only speculation built upon speculation. CDFA credibility is damaged and is diminishing as they continue to falsely promote the LBAM eradication program.

Growers knowing that LBAM is a crop quality issue, and are under extensive pressure, do not speak out because of the imposed quarantines and the restrictions that are being caused by the program. CDFA needs to be trusted because there are other pests that will arrive here, and they'll need to be dealt with in a way that controls them. These control programs need to have public support. There's very little public support for the light brown apple moth program. The light brown apple moth is not one of these pests.

I also think that the UC can provide necessary independent review and analysis of potential pests and advice to CDFA. CDFA claims a willingness and effort to be open and inclusive, but in reality are exclusionary, not available, and not willing to engage the public and address views critical of their own. It is interesting to note their behavior when the science does not support their conclusions and actions and what has become a program wasteful of taxpayer money.

Thank you very much for the opportunity. I look forward to questions.

SENATOR FLOREZ: Thank you.

Let's go on to Dr. James Carey.

DR. JAMES CAREY: Thank you, Mr. Chairman, for allowing me to testify this morning.

Just as background, I'm a professor of entomology at UC Davis. I've been involved with exotic pests since 1980, when I first was appointed as faculty. I served on the CDFA Medfly Scientific Advisory Panel from 1987 through the mid-'90s, along with Dr. Chambers to my right here. I have published in organized workshops in invasion biology and published a whole collection of articles on that and also a paper on revisiting eradication with some of the most prominent invasion biologists in the country.

So, let me set the stage by briefly reviewing the status of LBAM. As my colleagues here on the panel have noted, the known distribution in California is fifteen counties and 23,000 square miles. There's every reason to believe—indeed, I believe certainty—that the distribution of LBAM really is in every county in the state. In light of this biological reality, LBAM should be viewed less as an invasion in progress and more as an invasion that is completed. It follows, then, that to consider eradicating this pest is to consider eradicating what is effectively a resident insect, not unlike any number of exotic residents, ranging from the cabbage moth to bark beetles.

Now, as I see it, the central problem with the EIR follows from the reality of this LBAM invasion and the state's proposal to eliminate it completely; that is, eradicate it. I consider it a fatal flaw of this EIR that it's based on the erroneous assumption that eradication is possible. Nowhere in the document do they address, much less provide, evidence for this assumption. It's difficult for me to overstate the difficulty of eradicating a pest that is as widespread and as entrenched as LBAM. Eradication programs are not unlike military operations. They have checkpoints for preventing movement of material, the application of control tools known to be effective—none of which we have that are effective—the ability to monitor populations at extremely low levels, measures put into place to prevent reintroduction, and so forth. A program that was honestly concerned with eradicating this pest would be honest to itself and acknowledge the enormity of this mission.

Now, here's the issues with the EIR. First, contrary to what is stated, there is no precedent for eradication of any moth species anywhere in the world. The pink bollworm they cite, as cited there, as well as the codling moth in British

Columbia, these are not withstanding. Indeed, both of these programs are control and not eradication. They simply have not been successful.

Second, contrary to what's implied in the EIR, the Moss Landing facility production will not even be remotely close to what would be needed to have a chance at eradication. That's even conceding that SIT would be effective, which I don't concede.

Third, even if SIT was effective, there is no way that you can eradicate simultaneously in all these areas. This is a huge undertaking. Therefore, you end up with this endless cycle of population reduction in one area, and then you go to the next and you have resurgence in the one you just left and so forth. It's just this cycle. They cannot engage all of these areas in eradication simultaneously, and so you end up with this reintroduction problem.

And the fourth issue here, too, is the criteria for declaring eradication is based on political expediency and not on biological reality. This idea that eradication is achieved after three generations of noncaptures, regardless of the pest biology, the effectiveness of the monitoring tool, or seasonality, is really biologically ridiculous.

Now, the recommendation I would have for this EIR is that CDFA be asked to add an addendum that contains an honest and scientifically based and vetted account in which the following questions are addressed:

- What is the precedent for eradicating LBAM?
- Two, what is the likelihood of success based on entomologists' views? and with detailed explanations of why.
- Third, what is the definition of success?
- And fourth, given that the eradication concept is time-limited—otherwise, it's control—at what point do they decide that this is no longer feasible?

This should be vetted by objective scientists familiar with the principles of invasion biology and have no ties to CDFA.

And let me just close, too, with a mention of a policy paper that I just read about in the *Journal of Science* last week. And this is “Science for Policy Project.” Its advisory board is Senators George Mitchell, Howard Baker, Tom Daschle, and

Bob Dole. It's regarding how to couple the science and the policy itself. It seems like this would be required reading for this committee as well as CDFA.

Thank you.

SENATOR FLOREZ: Thank you.

Dr. Chambers? Or who's . . . ?

DR. DERRELL CHAMBERS: Since you have no representation from APHIS or USDA or CDFA, maybe I can stand in for them, because that's my lifetime.

SENATOR FLOREZ: Sure.

DR. CHAMBERS: I have going on fifty years of work with the U.S. Department of Agriculture as an agricultural research service and APHIS researcher, and about forty years of a relationship with the CDFA in providing direction, advice, and consultation on precisely this kind of program.

I have to say, I had very high regard for CDFA in the way it developed those programs, and I'm primarily talking about the medfly and some of those efforts. I'm here to tell you that I'm extremely disappointed, as a professional in this line of work, in what is essentially a smoke-and-mirrors effort to conduct a program that is in no way what it purports to be.

You've already heard that the bug is distributed beyond the veil of eradication. You've already heard that it's really not a problem anywhere that it's been well-established or is endemic. So, I want to tell you that the technologies of pheromone application and sterile insect technique, as purported to be applied here, cannot work. They would not have worked if it had been found as a small infestation in Santa Cruz. At the time they found it, it wasn't a small infestation in Santa Cruz; it was all over the place. But they told us that it was still early and it could be eradicated.

There's such a list of reasons why pheromones applied in this way cannot work. It's beyond the time that I have to tell you, but the bottom line for me here is that it's not about the technology and it's not about the distribution and it's not about the biology that most disturbs me.

Let me give you an example of what's going on here for APHIS. I was part of a team that went to China to help convince the Chinese that our program for medfly—a combination of pheromone attract in some trapping and suppression—

was adequate to allow the Chinese to accept California citrus. What was going on, really, was the Chinese wanted to trade some of their products for our citrus. This is an issue about trade. It's not an issue about eradication. This is an insect that is miscategorized as a red-label bug, and in that sense, it triggers quarantine activity. So, this is a quarantine issue that is being passed from the grower's responsibility to the public sector.

As you've heard, in New Zealand they're totally capable of applying these same technologies at the grower level to allow them to export their products. And that is where it ought to be applied here. It ought to be applied that way here because it is so far beyond the public realm in terms of its distribution and its permanent insertion into the environment that the public program cannot work. We need to accept that this is an insect that is now endemic in California and which should be referred to the industry itself to apply these techniques, which will work at their level but which cannot work in the environment at large.

And I repeat that I give you this opinion from forty-five years of experience as a pheromone, hormone, selective pesticide development specialist for the Department of Agriculture. I was director of the U.S. Department of Agriculture's primary laboratory in Gainesville, Florida, for the development of pheromones. My experience in that realm of time tells me we're way beyond using these techniques for eradication in California. Let it pass to the responsible party, the affected party: the growers themselves.

Thank you.

SENATOR FLOREZ: Thank you.

Yes.

MR. TOM KELLY: Good morning, Chairman Florez, committee members. Thank you for the opportunity to testify regarding the adequacy of the Draft Programmatic EIR on the light brown apple moth eradication program. My name is Tom Kelly. I'm a member of the Pesticide Watch Advisory Board and Stop the Spray-East Bay Steering Committee.

Our groups were among the many health and environmental advocacy organizations that lobbied for an objective scientific review of the apple moth program under the California Environmental Quality Act and submitted many

comments on this Draft EIR. We've concluded that this EIR is an incomplete and inadequate analysis that is based on assumptions about the apple moth that have led the authors to unsupportable conclusions. The EIR:

- Ignores significant facts showing that the moth is not dangerous to agriculture.
- Contends that the apple moth should be eradicated, although the CDFA has never been able to do more than control pests that pose a real danger to California agriculture.
- Bases its conclusions on flawed assumptions and is vague about program specifics.
- Assumes without substantive evidence that the no-program alternative will cause significant health effects, especially to children.

The Draft EIR does not adequately evaluate the health, environmental, and food safety risks of the program. It ignores the hundreds of illness reports made after the 2007 apple moth aerial pesticide spray in Santa Cruz and Monterey counties and, remarkably, finds that the proposed aerial and ground pesticide spray causes no negative health effects. The EIR relies on flawed health and environmental studies by state agencies. One study examined only a fraction of the health complaints filed after the spray in 2007 and concluded that (quote) "It's not possible to determine whether or not there is a link between any of the reported symptoms and the aerial spraying" (end quote).

Another study involved a small number of very short-term toxicity tests of only the active ingredient in the pheromone-based pesticides, which bears no relation to what actual exposures will be from a multiyear spraying program. For the EIR to simply repeat, without further analysis, the state's prior carefully crafted conclusions is an egregious abdication of the purpose of EIRs under CEQA.

The EIR does not evaluate the safety risks of the program as a whole. Instead, it looks individually at each proposed apple moth treatment from aerial and ground pesticide spray to shooting blobs of glue laced with toxic pesticide onto trees and telephone poles, even though these treatments would be used in combination in the program. The EIR evaluates some health risks and not others. Although it finds health risks to children from the no-action alternative, it does not

consider that children could pick up and eat the aerially sprayed pesticide flakes. The EIR does raise the question of how likely it is that aerial sprayed vegetables would be washed before eating. So, the risks that the spray flakes might be eaten was on the authors' minds.

The EIR relies on a number of flawed and unsupported assumptions that many of the panel members have mentioned previously. The EIR defines the no-action alternative unreasonably as entailing mass pesticide use by private landowners, even though there's no real evidence to support that scenario, other than Dr. Dowell's two documents that have neither been published nor independently reviewed. The EIR exaggerates the risk of the moth, including the recent isolated incident in which an unconfirmed species of moth did modest damage to a single blackberry field in Watsonville. This is the only alleged evidence of apple moth damage in California that the CDFA has produced in the past two years. And they've even noted that it's difficult to determine whether or not the moths and larvae that they're looking at are actually apple moths, and have asked the Legislature to support funding for better DNA testing so that they can determine the identity of the moth.

The EIR defines almost the entire state as the potential apple moth treatment area without offering any specifics about which treatment would be used, where or how, and what the impacts would be, given local geography and climate. Despite repeated requests for clarification, the CDFA has never specified where aerial spraying will take place, saying only in forested and agricultural areas. Would that include the parklands adjacent to cities, such as parks in the East Bay Hills or Mount Tamalpais? How far from the aerial spray zones. . . how far will they be from populated areas? Drift in the 2000 spray was detected more than three miles from the spray zone.

I'll conclude with two observations. Our groups appreciate that this committee is looking at the adequacy of the EIR now rather than allowing a deeply flawed and expensive process to continue unchecked at a time when teachers are being laid off, state parks closed, and essential services cut. It makes no sense to continue spending taxpayer money on an unnecessary program.

Our interest here is in opposing a poorly conceived multiyear, multimillion dollar program of the CDFA. We are fully supportive of California farmers and recognize that they are being unfairly punished by inspections that damage their crops and requirements to use chemicals that they would not otherwise apply, and by quarantines that prevent them from shipping produce that their counterparts in other countries, where the moth is naturalized, can freely ship to this country.

I thank you for your attention and concern for this important issue and look forward to any questions you may have.

SENATOR FLOREZ: Thank you.

Any more testimony on this particular panel? We have David Chatfield as well.

MR. DAVID CHATFIELD: Thank you very much, Senator Florez, for the opportunity to come and address your committee. My name is David Chatfield. I am the executive director of Californians for Pesticide Reform. It's a large coalition working on pesticide issues around the state.

I am not an expert on this issue. You've been addressed by multiple experts on this issue. I'd just like to say a few words and try not to repeat everything that people have said already.

We think that the fundamental problem of this EIR is that it gives answers to the wrong questions. It's an EIR that's based on flawed assumptions of the LBAM program; that LBAM should be, in fact, an actionable pest and that eradication is a necessary and achievable goal. As you've heard considerable testimony, that's very, very unlikely.

What should CDFA be doing? Well, we think that it should join the California public interest groups, like Citizens for Health, in calling on the USDA to reclassify LBAM, to remove the requirement for emergency eradication, and persuade the federal government to treat this as a trade policy issue, as Dr. Chambers suggested. I think that the \$3 million that's being spent on this scare campaign on television—"They're Here and They're Hungry"—would be much, much better spent trying to push for those kinds of changes.

One issue that I haven't heard brought up here is the question of the scope and the size of the light brown apple moth in California. Some of the folks here

have said that it's probably already where it's going to be. There is a recent study that's been done at UC Berkeley, that's a temperature-driven predictive model of likely distribution of LBAM in California and Arizona, that suggests that it may not be where it's predicted to be in this EIR and suggests that its likely ecological and economic impacts would be less than previously assessed by USDA and that its current pest status warrants reevaluation. I have this report, and I would like to send it to the staff of this committee. To whom should I send that?

SENATOR FLOREZ: You can send it to John.

MR. CHATFIELD: Okay, thank you.

I'd like to add that, although quarantines aren't necessary, quarantine areas have actually been expanded. And as the previous speaker said, it's the quarantines themselves, not LBAM, that is hurting agriculture right now and that it is likely to continue hurting agriculture. That's just essential that that is stopped. And I think that CDFA could play a creative out-of-the-box role in doing that if this committee and the Legislature pushed them to do that.

Finally, I'd just like to say that the no-action alternative that's been discussed here simply isn't supported by any evidence. It seems to us that it is at least as likely, probably more likely, that a no-action alternative that is truly no action would result in the gradual emergence of natural predators that could keep LBAM's damage modest, at the most.

So, I'd like to thank you very much for holding this hearing. I think it's terrific that the committee has decided to enter into this discussion early and to get the facts out.

Thank you.

SENATOR FLOREZ: Thank you. Okay. I'd like to, if we could . . .

SENATOR LONI HANCOCK: Senator Florez?

SENATOR FLOREZ: Yes.

SENATOR HANCOCK: If I could. I am going to be chairing my own committee meeting in two minutes, so I'm going to have to leave. I would simply like to thank you very much for having this hearing.

The eradication proposals that have been quoted in the past have been of enormous concern to people in my district, which is a densely populated urban

area that was going to have aerial spraying in the middle of the summer, in the early evening, when many people are outdoors.

I appreciated the material you provided and would have questions, but I do have to go and chair my own committee.

But thank you all so much for being here. And I hope that we can engage in a constructive dialogue with CDFA. I'm disappointed that they apparently are not going to be here today?

SENATOR FLOREZ: They're not. That's right. Thank you, Senator. And we'll make sure we have the full transcript to you as well so you can review this.

I have a few questions, and I know Senator Maldonado will have a few questions.

SENATOR ABEL MALDONADO: I don't have any questions.

SENATOR FLOREZ: No? Okay. He always does, though somehow in the middle of this. Watch. But let me start with a couple of just basic so I can understand some of the testimony.

I'd like to start first with the premise; and the premise, at least from the testimony presented today, to most Californians is, very simply put, is this an issue or isn't it? In other words, most of the testimony today reflected—and I'll use Dr. Chambers' words of "smoke and mirrors"—or maybe some comments by Dr. Carey which said that this is a resident insect versus something that we can actually eradicate. Can you speak a little more on whether or not this whole process, this EIR and what will come out of the EIR, the various methods that are being promoted within the EIR, speak to the fact that this will be treated as a resident insect? Does anything in the EIR move us in that direction, or is this simply moving within the model of eradication? That's maybe the first threshold question I have.

DR. CAREY: This is right on the money here because the assumption is that, first, it's a serious pest; and secondly, that it can be eradicated. Neither one of those fundamental questions are really addressed at all.

I, along with two colleagues—Dr. Frank Zalom, National Academy of Sciences scientist, and Bruce Hammock—last year sent a letter to the Secretary of Agriculture making those two exact points. Frank was the IPM director, statewide

director, at UC for ten years. He knows this business as one of the world's foremost authorities here. He views this just as another leafroller that's not anything to be that concerned about, any more than any of the ones that are currently resident. So, I defer to him and he believes that.

And then, also, regarding the eradication, I come back to comments that were made about the technical advisory committee. I know a few of these people—or, actually, most of them—and I'm not speaking for them, but the general consensus in the entire entomological community is that this pest cannot be eradicated. It's not even a close call. It's puzzling why they're going forward with this. I mean, it's not puzzling in a political sense, but certainly biologically, this is simply unrealistic. And it's not addressed in this EIR.

SENATOR FLOREZ: The reason you say that, I assume, is that within 2,300 [sic] square miles, within fifteen counties, if I were to set a trap up in one of the counties that we haven't found it in yet, and if I were to put up hundreds of traps, I bet I would find it. In other words, I think as Mr. Upton said, the more traps you put out, the more likely you're to find some sense that this is a growing problem, because, as you put more traps out, you find more, I guess is the assumption. Correct?

DR. CAREY: That's right. The analogy I use is that this is—and it's, I think, an appropriate one—that is, that this is a cancer-like process. And so, you're not eradicating an LBAM population; you're trying to eradicate a million of these, because every little metastases can regenerate the population. So, anything short of a hundred percent effectiveness is really controlling that eradication. That's even, in concept, the difficulty with eradication.

SENATOR FLOREZ: Yes. And if you guys can identify yourself right before you speak, that would help us with the transcript. Thank you.

MR. UPTON: Roy Upton. I think there's something very important for this committee to understand, is when this program first started, you could say honestly that there may have been a scientific basis for implementing the program. LBAM was on a list. USDA/CDFR believed at that time that it was a pest of economic significance. So, I give them credit for that. They moved. They moved very fast. And, as these experts would tell you, they often move on programs

before science. So, they don't get the science in because they don't feel they have the time in order to attack the pest at its early stage. So, I give them credit for that.

But now, this is two-and-a-half years later. We have had a chance to look at the science. Only, they've dug their heels into a program that now no longer has scientific support. When they sprayed Santa Cruz and Monterey, they never asked their Technical Working Group, *Is this a feasible strategy?* The Technical Working Group, all they said originally was that aerial spraying may be part of an effective eradication program. And then, CDFA moved ahead, as their sole eradication tool, which Dr. Chambers will tell you very clearly, pheromones were never developed to be an eradication tool. It's a control tool.

So, they've dug their heels on a program that they once thought had value, and now, I believe, they have to defend that position. I think that's the very first thing that this committee should understand, the history of it. But now that we have two years or three years of looking at the science, it's just no longer supported.

SENATOR FLOREZ: Yes.

DR. HARDER: Daniel Harder. We also have the advantage of looking at places where light brown apple moth arrived as an invader: New Zealand and Hawaii, where it's been there for over a century. And we know it's been here in California, and we know how it's been controlled in New Zealand to very high levels by parasites that will lay eggs in the larvae or will take advantage of the different life forms and use them as a food source. Since we had this precedent in New Zealand—and I visited there and talked to people—I started looking at parasites. So, I started gathering larvae, as I saw them, in the collections at the Arboretum and raising them out in jars and found that over 200 larvae, that I've raised over the last three years, 90 percent of them have been infected by a wasp or a fly and other things. By me removing that larvae from that plant, I'm also preventing it from being eaten by birds and wasps and other things that will actually predate on it.

We know, from a study that was funded by CDFA—a researcher at University of California, Berkeley—that there are seven parasites that affect light

brown apple moth in California and over seventy different things will use it as a food source. So, we know that it's been here long enough to establish a relationship with these parasitic wasps, which is simply seeing light brown apple moth larvae as similar larvae to what they've laid eggs in before. We find that light brown apple moth—and this study showed that—that light brown apple moth is parasitized to higher levels than our native leafrollers. So, there's actually enhanced control of this invaded moth in California over what we have in controls of our own natives, which are not a source of problems in agriculture, nor are they a focus of any eradication attempts.

SENATOR FLOREZ: Maybe just another question on the CDFA's decision to move to EIR; and the reason for that, again, was a court. . . so, in other words, if we had not had a court decision, what would CDFA be doing at this point in time? Do you have any speculation?

MR. UPTON: Roy Upton. I live in Soquel, which is right outside of Santa Cruz, so I was involved in the beginning. Had they obviated the EIR process, which is typically mandated by law under the declaration of an emergency—that they actually declared themselves—they were brought to court, both in Santa Cruz and Monterey counties, and both courts ruled that neither CDFA nor USDA provided any evidence that any emergency existed; and therefore, they did not have any right to negate the EIR. So therefore, before they were to implement aerial spraying again, they needed to do the EIR. And then, I expect, because of the massive opposition to aerial spraying California-wide, they knew they couldn't go back to that. So, they moved to sterile insect releases, their primary eradication tool.

SENATOR FLOREZ: And so, CDFA now is on this path. Their due date, I assume, is September 28th for the closure of this, and then they're going to make a decision based on the amount of comment that has been produced. Has this been the process for the way we deal with eradication programs in the past at CDFA? I know they're not here. It was one of the questions we were going to ask them. But we go out, in essence, poll folks and ask them, you know, *Give us your comments*, but yet, we're still going to be the decision-makers in this. There's been some mention of Mr. Dowell's writing of a memo at the beginning of the process. I

assume he'll be part and parcel of making a decision on this EIR, if the _____ had been looked at from a peer review perspective, someone looking at this going out. So, I have a lot of questions, but maybe first start with: Is this the way we normally do these types of programs?

DR. CHAMBERS: Derrell Chambers. Because I was chairman of the Fruit Fly Science Advisory Panel, I was always involved in the process of implementing a new project. This never happened. There seemed to be freedom to proceed without much political input. There was always a lot of public input. I've been screamed at by lots of people that didn't want to be sprayed with malathion, but we got past that.

I want to give you a couple of other examples of what will happen. Because this is so broadly spread, once they start using either pheromone or sterile insects, they immediately become blind. The pheromone that they will apply in order to confuse the males' ability to find females is the same pheromone that's used in the trap. So, they can't find the trap. And secondly, once you release a lot of sterile insects, you're involved in a huge problem of sorting the sterile moths from those that are wild. And these have historically been programs that are extremely vulnerable to the failures of implementation that are human and that are technical. There's not a single sterile insect technique application that has not failed, maybe multiple times, and had to be restarted and reinstated, or the rearing had to be moved, or a new technique had to be employed.

Finally, my example is, again, a medfly example. As I mentioned, the issue was quarantine. They wanted to move product out of California to countries that don't have medfly, so implemented a program in Los Angeles: the whole of the L.A. Basin is being covered with sterile insects. That's not an eradication program any longer. That is a permanent program, basically a permanent program, of suppression that, in its implementation, masks finding medflies. But it's adequate to satisfy trade partners that the products can be moved. And that's what would happen here if this was implemented, and that's why I say it's smoke and mirrors, because they know that's what's going to happen. They know that that's what it's about, and they know that they cannot succeed in eradication. They really can't even succeed in good suppression over this large area with these techniques.

SENATOR FLOREZ: Let me follow your comment up with the fact that. . . I mean, I guess all of us read everyday—and some care and some don’t—but I’m sure that Senator Maldonado and I both pick up that the quarantine areas are growing. It’s like pretty soon there’s a quarantine area, and there’s another quarantine area, and another quarantine. Do you see these quarantine areas ever dissipating or getting larger, so soon California itself—every county—becomes a quarantine level? How does that fit in with this program that ultimately. . . is this going to end the quarantines? How do those two fit?

DR. CHAMBERS: The way to end the quarantine is to end the classification of this insect as a red-tag bug.

SENATOR FLOREZ: Yes, that’s what I’m wondering. You mentioned that.

DR. CHAMBERS: And that’s where pressure from within the state ought to be applied at the APHIS level. This is an APHIS problem. APHIS is not very good at developing and implementing policy. They are not policy experts. They are policy appliers. So, they need to be convinced that they need to look at the policy that’s involved here, not the implementation.

SENATOR FLOREZ: And you can flesh that out a bit more.

Yes.

DR. CAREY: Jim Carey. For perspective here, what’s happening and what needs to be accelerated is a shift in paradigm. When I first got into this business, it’s really a dichotomy. You have the academics that deal with the IPM, and you have the USDA and APHIS and so forth dealing with what they call “area-wide management.” And what’s happening now, the trend—and this is just a recent “Book 2” of the movers and shakers and the SIT and the USDA and so forth—is that it’s a trend away from eradication in two area-wide IPM. And so, you have these two paradigms. It used to be a dichotomy—still are to an extent—where they’re beginning to merge. So that rather than eradicating, you really have area-wide IPM, or you have—and this is what Dr. Chambers is talking about—it’s in the growers’ hands where you have an agreement between a buyer and a seller that you have “X” number of traps out, you don’t catch any, and therefore, it’s a low risk and you can ship. But it should be in their hands, and that’s where things are moving. That’s where I believe that the program should be focused.

SENATOR FLOREZ: Yes.

MR. UPTON: Roy Upton. If I could add something on the trade part. It's kind of a double-edged sword. We can reclassify here domestically, and as long as Canada or Mexico and other trading partners still quarantine against LBAM, we're still under their guns. So, whatever USDA or APHIS has to work out with those trading partners, that has to be worked out. If you remember from the meeting we had in your office with USDA, they had no interest in taking that line of discussion. They told us, *Oh, good luck at changing the minds of trading partners.*

What I think is very important for this Legislature to understand is two things. In the package that I left for you, in the Citizens for Health package, you have a summary of our reclassification petition. That talks about—the full petition—talks about the quarantine issue. Canada adopted our trade restrictions against LBAM so they could access our market. And Mexico likely did. When Mexico first issued their final sanitary bulletin, they specifically said that *We classify LBAM this way because we want access to your markets. But, if you change your classification, we would consider changing ours. And, if new science suggested that that classification should change, we would consider that.* We got a similar communication from Canada—the ag officer in Canada—saying the exact same thing: *The only reason we quarantine for LBAM is because we have to satisfy trading partner quarantines, and the U.S. is our major trading partner. So, if we didn't quarantine for LBAM, our access to the U.S. market would be threatened.*

So, it's this revolving door quarantine policy that was initiated by USDA in 1984 in this country and just became part of NAFTA—became part of trade between Mexico and Canada. Japan quarantines for everything. Most of Asia quarantines for most things. And we always get into these trade wars: *This month we want to ship broccoli and next month we want to ship citrus and next month apples.* So, we whack each other back and forth, and this is the basis of what's going on. Only, USDA, as they told us, they don't have the time. They're so constantly busy putting out fires, they don't have the time to go after the trade aspects of the issue. And maybe there's help that can come from this Legislature as who we would go to, to start trying to affect the trade part.

And one last thing: Another communication that is in our reclassification petition is a communication from a trade representative, a U.S. trade representative—Richard Dunkle—to the trade representative of Mexico, acknowledging that LBAM was a superficial leafroller, a transient pest, and that the current practices that we utilize in the U.S. for pest management are adequate to prevent LBAM transportation into other countries. They acknowledged that in 2007. Now, that might have been them trying to satisfy Mexico trade representatives, but that was a statement that they put in writing to Mexico, that they acknowledged that this was nothing but a superficial and transient pest that was easily managed in agricultural systems. And that is where we have to go.

If we maintain our classification, and if we don't take the issue to the floor of the trade representatives, this is going to be just like all the other eradication programs that CDFA has managed over the last twenty-five years.

I've also given you in that package a list that was given to me by Secretary Kawamura of 274 eradication programs that they have managed since 1982. Two hundred and seventy-four programs for nine insects. Do you know what that means? That they've been eradicating the same nine insects every year since 1982. Secretary Kawamura was on the news claiming 100 percent efficacy in eradication. And they've been eradicating the same nine pests for twenty-six years. These are not eradication programs. They're control programs, but I think predominantly for funding or for political, as Dr. Chambers mentioned, for political quarantine reasons.

SENATOR FLOREZ: And this would speak to the \$3 million ad campaign.

MR. UPTON: This is actually interesting. The reason they did that is, last year, CDFA sponsored a scientific symposium on LBAM. Graciously, they allowed me to attend. There was a director from New Zealand Ag who showed a commercial that they showed in New Zealand when they had an outbreak of some pest and they sprayed their population with *Bacillus thuringiensis* (Bt). At first, their eradication program and the idea of aerial spraying was met with great opposition. And then they did this commercial that showed this little moth on a leaf very close up, and they talked about how this moth eats everything under the sun, just like we've been told about LBAM. Then, as they back off, it shows that

the leaf is eaten; and then they back off further, the whole tree is decimated; and then they back off further, and it looks like Middle Earth was destroyed in the Hobbit land. Right? And they said, *This is what's going to happen if you don't support our program*, and that's what they've started with the "hungry pest" program: *We're the light brown apple moth, we're the gypsy moth, we're in California, we're hungry*. And Kawamura is saying, *This is going to destroy our way of life, our food supply, and our redwoods*, and none of it is true. These are little nibblers. They're almost like the light-brown-eats-almost-nothing moth, not the light-brown-eats-everything moth, really.

That's where they got the idea for this ad campaign, though.

SENATOR FLOREZ: Okay. Was there any input on the ad campaign from any of the advocacy groups, do you know?

MR. UPTON: None whatsoever. We have paid attention to pretty much every advocacy organization, environmental organization, that's been involved in the LBAM program since its beginning, and we heard nothing about this ad campaign until it hit.

SENATOR FLOREZ: Okay. Let me ask a question just generally to the panel about the New Zealand model—what's happened in New Zealand. What are they doing that we're not, other than the commercial that we used, but what is New Zealand. . . maybe someone can explain that a bit and what we can learn in California.

DR. HARDER: Dan Harder. Since they are under restrictions to import products into the United States, they've spent. . . a group there—HortResearch, which is like the USDA equivalent there—spent considerable time and effort on understanding the biology of the pest and how to control LBAM to zero tolerance levels. When the investigations began, they were using broad spectrum pesticides which destroyed not only light brown apple moth but everything that ate it. And so, when these were banned by mandate from the USDA, saying that *We do not want to have these organophosphate pesticides on any fruit coming into the United States from New Zealand*, New Zealand had to pull back and stop using those substances, those pesticides, which allowed them to see that the predators and the parasites came back within two years, to be able to control the pest to almost a

99 percent level, plus. They were able to export crops from point of export. Not at the farm level. Once the boxes of apples arrive at the port, they're inspected, and then, if there's an apple found in a crate, that crate is simply redirected to a country that doesn't have those restrictions.

But there is no on-farm regulations. There are no on-farm quarantines like here. If you have LBAM on your farm, they don't care. I mean, it's up to the farmers—as it's been mentioned here—it's the farmers' issue to keep it under control and meet these restrictions. And the government is actually helping them get their export products out by providing the inspections and providing the research that's necessary to control it.

The model in New Zealand is that—and we found out by meeting with them personally—that it's a pest of almost no concern. They wanted to talk about it for a very short period of time. We wanted to consume them with questions because we had so many, but they started moving on to other insects that were much more threatening—like Roy mentioned this painted apple moth which inhabited the western parts of Auckland, and they actually aerial-sprayed *Bacillus thuringiensis*. In retrospect, they got a citizens group and a government advocacy group, a sort of ombudsman, to look at the damage. People got blisters on their skin, and then there were problems with the aerial spray. But they controlled the painted apple moth, which is a serious pest. We don't want it here. That's something that we need to watch out for.

Light brown apple moth is not that pest, and they made it very clear that natural controls are in place and that if you just monitor your fields carefully, which is a good integrated pest management strategy, you use thresholds to understand, okay, it's over a certain level and the traps are just thirty-five moths per trap, per month. In California, we've never seen anything over four moths per trap, per month—for a period. Over thirty-five moths, that's when they actually start going out and looking for how to control it. They don't even spend time looking at their crops. They look at the traps. So, they're using this very effective trapping program to give them indications about when treatments are necessary, and they need to start looking for it. But actually, it's a background pest; it's not of serious concern.

You'll notice in the literature that the publication record for LBAM dropped off after they stopped using organophosphates and they figured out how to control it using natural methods, because it wasn't of interest anymore. It wasn't a target anymore, and it wasn't of too much concern. Roy mentioned, 99.9 percent of all shipments are able to leave New Zealand because they're able to control it to those levels.

MR. UPTON: To just add—Roy Upton—is their basic strategy is pure, unadulterated IPM. It's one of the things that was completely negated by CDFA in this EIR as part of a no-option program. They specifically state that integrated pest management is not an appropriate strategy because it's not an eradication strategy. But that is the primary reason why New Zealand and a growing number of farms in Australia are able to ship all over the world without any LBAM whatsoever. Formal agricultural studies—and I wish Senator Maldonado was here because I know he's a farmer and that's his strong interest—formal studies in New Zealand show that those IPM practices are not only, at worst, cost-neutral but over the long term actually have cost-benefit because they've got greater control over all pests that allow them to use less pesticides and ship more. So, at worst, the practices of cost-neutral and long-term save money, and this should be important to this committee itself.

SENATOR FLOREZ: Right, especially on cost.

Yes.

DR. CAREY: Jim Carey here. I'll just make a general point to follow up on that, and that is, I come back to this bipartisan policy—"Science for Policy"—but the issue here is to develop policies that differentiate questions that involve scientific judgments from questions that involve policy judgments. These get conflated, basically, here. CDFA seems to have an endpoint, and then you cherry-pick the science that is consistent with that endpoint. I see coming from the University of California, along with Dan Harder, that University of California here really has an important responsibility and role to play here. I really wish that they would somehow step up beyond sort of CDFA appointing a couple on the technical advisory committee or Dan and myself and a few others testifying. There's a major role here as a research arm of the state.

SENATOR FLOREZ: That's a good point. And let me just transition to the question of independent review, or peer review. Are those both the same, or are those separate? How does the UC play a role in that? I mean, something that Roy mentioned as a recommendation. I'm just trying to understand how we can, in the future, make these decisions and have some confidence that this has been looked at beyond the rush to, I think it's been mentioned—small window, we'll get it done—and here now it's a 2015 window. I mean, how do we move from that small window to . . .? you know.

DR. CAREY: That's right. Jim Carey here. Again, as I mentioned in my testimony, I came to UC Davis in 1980, and the policies and the technologies basically are exactly the same now as they were twenty-nine years ago, and the same protocols and so forth. And that's why I come back to this paradigm. I see a long-term and a short-term. The longer term would be where University of California, in coordination with USDA and California Food and Ag, could help take the lead in developing this new paradigm. They really need to rethink this whole thing. And that is, there's trends here that this eradication is just. . . get real; it doesn't work anymore. Or never did, really, but certainly you can only play this game of control in the name of eradication, as Roy mentioned.

In the shorter term you can have panels. There's a brain trust there of colleagues at ten different campuses. There must be several hundred ecologists and so forth where you could have a pool of scientists, entomologists and others, but it goes well beyond entomology—multidisciplinary, right—that could draw from. Where you have questions like this and policy questions where, through the deans and so forth at UC, they could form an independent panel to really render judgment here. And this goes beyond when you have a technical advisory committee. It's what I call, "Should it be two drops or one drop of lure on the wick?" These are technical questions. The deeper scientific questions have to do with the nature of the invasion and, of course, whether it can be eradicated and so forth. These are the deeper scientific questions, not the technical ones.

So again, I think University of California really has an important role to play here.

SENATOR FLOREZ: Yes.

DR. CHAMBERS: Some interesting history—if you have just another moment.

SENATOR FLOREZ: Of course. We've got lots of time now that CDFA didn't show up. So, go ahead. Feel free to fill in time space.

DR. CHAMBERS: The Agricultural Research Service was primarily responsible for developing the concept of eradication in the first place. There was the leadership in ARS in the person of Dr. Knippling, who invented sterile insect technique as an eradicator tool. He was the genius in picking the right bug. They eradicated the screw-worm fly. Because of its biology and distribution and low population, it was perfect. ARS became very heavily involved in seeing whether or not that could be extended to other insects, and the fruit flies were one of them, and appropriately so. That is the stage at which there became conflict of philosophy between the University of California and its entomological staff, primarily at Berkeley, and ARS, in that they kind of entrenched the two sides: there's a pro-eradication and there's eradication is unreasonable and shouldn't even be attempted; this is really a biological process that should proceed with natural controls and IPM. That's the stage at which the University of California withdrew interest in participating in the research.

There was early co-involvement in research on control and biology of some of these pests. As Dr. Carey says, that has to be reconsidered. I think California University system could very well reach out to ARS at this stage and renegotiate this attitude, because it's true. It's been demonstrated that eradication is not impossible but it's rarely appropriate. It's certainly not appropriate here.

SENATOR FLOREZ: And thus, the discussion: we continue to eradicate the same pest for two decades. If we really were to eradicate, they wouldn't be on the list anymore.

So, the paradigm shift, then, is one of control, in essence?

MR. UPTON: Probably IPM control in agricultural settings more than any other, because as Dr. Chambers says, you have to approach it biologically. The more you try to kill and disrupt ecosystems, the less that ecosystem can stand on its own. And that's, I think, the bottom-line paradigm shift that has to be recognized.

SENATOR FLOREZ: So, medfly, for example, is not at this point an eradication program.

DR. CHAMBERS: Derrell Chambers. The case can be made that fruit flies in particular, because they're so easily moved at the larval stage in fruit, are reintroduced, and that's been an argument within the circle of advisors, even on the science advisory panel, as to what extent is eradication ever achieved? Well, it's not being achieved in L.A.

DR. CAREY: Let me just comment—Jim Carey—the paradigm. There's a new paradigm. It's not just adopting the IPM paradigm at the grower level. It's really this area-wide paradigm where it's IPM. That's why they call it that. And so, it would be like a consortium of growers that may get together and agree upon with the people that buy their produce and so forth that they have a low risk; put out enough traps, and if they don't catch any, then they have this protocol agreed upon for when there's no risk of movement of pest and so forth. And so, it's not just adopting the existing paradigm; it's really a merging of both the area-wide of the USDA and the more academic-based IPM.

SENATOR FLOREZ: Yes.

MR. KELLY: Tom Kelly. I'd like to just make a comment on the issue of public health and public trust. There are many of us in the advocacy area that were opposing this program from the point in which the spraying took place. And I should note that I worked for the California Department of Health Environmental Investigations Branch prior to the beginning of the CDFA's program, and as a result, I knew many of the people in that branch who were tasked with supporting the CDFA in their public outreach campaign; and also with those who worked for the Office of Environmental Health Hazard Assessment, the state agency that wrote the study that indicated that there apparently was no link between the spraying and the health effects, at least none that they could establish.

I just wanted to point out two things. One is that there was, in my opinion, a lot of disagreement among those state agencies, especially among the health department and OEHHA, as to their ability to be able to support the CDFA campaign. In part because the CDFA was not completely transparent with those two organizations. An example of that was the study that OEHHA did on the

health effects of the spraying assumed a particular size of the spray when, in fact, the CDFA realized that the particles were much smaller than they had indicated and were actually inhalable by people who were sprayed. Yet, that information wasn't passed on to these other agencies in time to be able to actually change that health report. Nevertheless, even though after it became apparent that that was the case, they never went back to it again to actually revise that report based on new evidence.

The health department, over the many meetings at which the CDFA presented its case for the spraying, began to stop appearing at those events because, in my opinion, they felt that it was difficult to support the CDFA's contention that this was not harmful to public health.

So, I raise this not only because of the public confidence issue, but I also suggest that this has, and continues to cause, some difficulties within these state agencies, which should not be occurring. We should be able to trust those agencies, and we should be able to get good science from them.

SENATOR FLOREZ: Thank you.

Just a closing question maybe to each of you. Given the manner in which we were drawn into court and asked, I assume, to produce an EIR—and we're now in the process; that EIR will be completed—is it a foregone conclusion that we're going to continue on this path of eradication, any method that we pick in the EIR? In other words, is there any method within the EIR that recognizes a simple control mechanism, or is this purely premised on the fact that this is on the eradication list and we have to continue on that path?

MR. UPTON: Roy Upton. The EIR specifically has negated any control program whatsoever that didn't have eradication as its end goal. So, the foregone conclusion of the EIR is that eradication is still the primary goal, and anything short of an eradication program was not considered in this EIR, very specifically.

SENATOR FLOREZ: Okay.

Gentlemen, thank you.

MR. UPTON: Can I . . . there's one thing that I could add, if I could, that I would love . . .

SENATOR FLOREZ: You absolutely can.

MR. UPTON: . . . this committee to understand about the natural predation. You asked about how New Zealand controls their crops. We spoke with a gentleman from HortResearch—USDA’s counterpart in New Zealand—named Jim Walker, and Jim Walker said that the primary way that they came to control LBAM within their agricultural systems was through the introduction of seven parasitoids, direct parasitoids, and that that’s what gave them the greatest control over LBAM. Well, the last number that Nick Mills at University of Berkley has identified as native California parasitoids against LBAM is actually thirteen. So, now we have at least twice the number of native parasitoids that actually prevent LBAM larvae from hatching than they do in New Zealand where they have almost 100 percent control from parasitoids. And as Dan said, that’s only parasitoids, not including spiders, flies, and everything else that eat LBAM. This is very consistent with the scientific literature over the last seventy years, is that you have 90 to 99 percent natural mortality—death—of LBAM in all its life stages just biologically.

The single most important, I think, issue that this committee could understand is that it is nothing more than a background food chain insect, just like everything else that flits around our lights at night, but does nothing to anything, anywhere, of economic or biological significance. It’s just part of the ecosystem. And really, that’s how we have to look at LBAM, and that its DNA is so close to our orange tortrix here. That orange tortrix is also not a problem in agricultural systems and it’s native; that you can almost not tell them apart with DNA fingerprinting they’re so close. And there’s question as to whether or not they actually can distinguish them.

So, this is, I think, extremely important background understanding this committee should have, I think, about LBAM.

SENATOR FLOREZ: Okay. Thank you. Thank you all for your testimony. Appreciate it.

Okay, let’s, if we could, go to Panel 3. We have Claudia Reed from the California Certified Organic Farmers; Robert Dolezal; and Cynthia Cory.

And we’ll have public comment right after this panel.

Ms. Reed. Thank you for joining us. Appreciate it.

MS. CLAUDIA REED: Senator Florez, thank you so much for holding this hearing. Thank you especially for the effort to incorporate these comments into an official comment back to CDFA. CCOF will, in addition to participating today, be submitting our own comments that will be more extensive. I'm not going to repeat many of the things that you've heard earlier today, unless I want to do it for emphasis.

CCOF has been around since 1973. We're one of the largest organic certifiers in North America. We represent about 2,300 certified members through a trade association, and 350 supporting members. Our primary concern right now is the fact that we have many farmers who are being quarantined because of this pest. We are frustrated about the delay in the release of the Draft EIR. We're frustrated that they went the emergency route in the first place. We've got a website full of oppositions and support of some of CDFA's efforts too.

I really wanted to emphasize the comment that David Chatfield made earlier, that farmers and the public are in a position to need to trust CDFA. What's happened is we've lost that trust. As farmers, we have no choice but to trust the two enforcement agencies that oversee our ability to keep farming: CDFA and USDA. And the sad part about this whole issue is that we're losing trust on a daily basis.

CCOF supported CDFA's initial LBAM eradication plan because it used approaches that were approved for organic production systems. CCOF does not now support aerial spraying. CCOF feels that there are other ground-based eradication methods that can be used. CCOF's members do not use synthetic toxic pesticides or heavy metals, both because they are prohibited in the National Organic Program and because of our philosophical opposition to the use of these products.

CCOF does not oppose the use of passive pheromones or of sterile insect technology, although many CCOF members are involved with other organizations, that you've already heard from and that you will hear from, who do oppose these techniques.

We're really disappointed that CDFA has done such a poor job of reaching out to stakeholder communities with several seriously bad results, including

avoiding the need to do an EIR in the first place by declaring an emergency; ignoring and treating anti-spray groups with disrespect, further fanning those groups' anger and the public's negative reaction to the spraying and to CDFA staff efforts to explain themselves and their actions; lawsuits and moratoriums in Santa Cruz and Monterey counties resulting in serious economic loss to many of our members and other farmers in those two counties; poorly done quarantine inspections resulting in damaged crops; poor communication with farmers and with public, implying and, in some cases, saying outright that organic farmers were responsible for the spread of LBAM; and most recently, incorrectly and inappropriately advising an organic grower that he could use conventional pesticides on his field where LBAM were found.

Many CCOF members feel that the department should develop a management or control plan as opposed to an eradication plan. We're still waiting for some evaluation from CDFA about whether the previous aerial spraying program was successful. We would like to see this evaluation. And that is one of the "asks" that we would like to present to you, is to request an evaluation of the aerial spray program—was it effective?

We were at an industry meeting not too long ago where Mr. Robert Dowell, of the CDFA, made a comment that the sterile insect technology release program was not, in fact, an eradication design, but it was a preventive release program; meaning, that they will release the sterile insects in targeted areas where LBAM are high, such as the Carneros District in the Napa-Sonoma area, and they will hope that it works. We're really concerned that, by their own admission, the sterile insect release technology program isn't an eradication program.

The Summary Document on page S-4 lists areas of concern and controversy—environmental concerns. That's a pretty accurate statement of how many of us in CCOF feel. CCOF is concerned that many of the alternatives eliminated from further consideration, starting on page S-5 and going through to page S-6, are those that are routinely used in an organic system for all kinds of pest control. And they're used effectively. CCOF and many other organizations work diligently on all policy levels to encourage farmers to use management practices that are environmentally sound, including IPM, biological control, and

similar biological approaches. It really troubles CCOF that CDFA has determined, for purposes of this Draft EIR, that these methods are not useful against LBAM, when organic farmers know that they are effective at controlling all manner of pests.

CDFA and many other organizations are involved right now in a second year of an Ag Vision process that seems to include some environmentally friendly farming practices; yet, CDFA's own day-to-day operational staff continue to do a poor job of working with all stakeholders and keep promoting farming practices that depend on an eradication concept that does not seem realistic or achievable.

And that would be the second "ask" that we bring to this committee, is that you request CDFA to explain the supposed tension between this Draft EIR, which eliminates all of those alternatives because they apparently don't work, in contrast to their Ag Vision process, which talks about all those touchy-feely correct approaches.

That concludes my testimony, and I welcome your questions and comments. Thank you.

SENATOR FLOREZ: Thank you very much. I will have some questions at the end.

Let's go to Robert Dolezal.

MR. ROBERT DOLEZAL: Thank you, Senator Florez. This is Robert Dolezal with the California Association of Nurseries and Garden Centers. We will be submitting written comments to CDFA as part of their public process. We think that the committee's thanks are in order to CDFA for providing a very long and thorough, detailed, complete scientific assessment as required by the courts in Monterey and Santa Cruz of the likely impacts due, and the alternatives for, the light brown apple moth eradication program in California, including our nurseries.

As you on the committee know, this serious pest has already caused severe financial and business hardship to California's nurseries and garden centers. It hurts small and large growers and retailers alike. We estimate the losses, to date, for nursery and floriculture due to the destructive invasive LBAM now exceed \$10,550,000, including \$1,600,000 in direct crop loss, indirect losses due to loss

of market, and nearly \$8,950,000 thus far in lost jobs that won't be coming back. A continuing cost that grows faster every month.

Many smaller retailers are included in those who have suffered so much. They're just an LBAM or two away from shutting their doors. To lose the ability of residents of this state—and Monterey, Santa Cruz, and other California communities—to conveniently landscape their homes, buy flowers and trees to plant, because this destructive invasive pest exists in this state, would be a real tragedy with long-lasting impacts.

I'd like to respond to a few of the claims that were made in prior testimony. During a tour in July of regulators from the southern states, LBAM was found in every life stage by every regulator on raspberries, in organic raspberry fields, in the Salinas-Watsonville area. Those losses range from 20 to 50 percent of their crop. The remainder had to be juiced; it wasn't suitable for sale. I was informed by the ag commissioner of Santa Cruz County that there were currently no organic cane berry growers left in that county. That may or may not be true, but it's what was represented as the viewpoint of the county ag commissioner.

Further, South Carolina recently imposed regulation for LBAM above and beyond the federal order that makes it virtually impossible for nursery stock to be shipped to that state. Many other southern states, who have combined in a Special Needs Request to APHIS, are watching closely what happens with regard to South Carolina. At the current time, nurseries are voluntarily ceasing their shipments, giving up their markets in that state, and considering whether a test case is necessary so that they can actually sue to have them follow the federal order.

Continuing back to my prepared testimony—since this hearing is intended to assess the validity of the EIR Draft, we report that the impacts on nurseries are estimated in the EIR at lower values for our segment than actually will be experienced. The EIR chose to use 2004 economic data from Carmen & Rodriguez. It's out of date in light of Dr. Carmen's more recent 2007-8 economic report, which I will provide to this committee. Rather than nursery contributing \$3 billion in farm gate sales therefore, it has grown to \$4 billion in 2007. Instead of \$8 billion in total output, it contributed \$13.3 billion to California's economy. And finally,

rather than providing the 81,000 jobs indicated in the EIR, it now employs 217,500 Californians. So, this is a significant business and it's being significantly impacted.

Because the base numbers are understated in the report, the extrapolated cost and impact to nursery are understated by at least 25 percent, and in some cases as much as 60 percent. Therefore, the cost of LBAM to our community of growers and retailers is much higher than the EIR Draft suggests.

We'd also like to correct the assumption in the report that nursery operators would expand their use of pesticides to control this dangerous pest.

The nursery community has worked closely with regulators, academics, and county agriculture to develop a set of best management practices—systems approaches—that prevent the infestation of our nurseries. This effort is nearly completed. Note that this BMP is contrary to the claims made earlier that IPM was not permitted nor desired. In fact, the BMP, which is required under every compliance agreement for every nursery, relies on prevention and inspection rather than treatment. We stop LBAM at the nursery gates with trapping, perimeter bug zappers, removal of host plants from landscaping, and other measures. When an LBAM infestation is suspected in a nursery by its owners, their first choices are destruction of plant material, stripping of leaves, local spot treatment with horticultural oils, and natural biological controls or other safe methods that are preferred to widespread application of pesticides. We know how important every citizen believes it is that we must be good stewards of the land, our water, and public health. We take these responsibilities to protect our neighbors very seriously.

Where our BMPs have been applied, the discovery rate of LBAM has dropped from frequent to a tiny fraction. Very rarely—in some cases less than once per year—is a find made in our nurseries following these BMP protocols. For these reasons, we believe that widespread adoption of the BMP will substantially reduce reliance on pesticide solutions in our nurseries, and both the program and no-program alternatives may overstate the impacts of LBAM on nurseries in the end.

Thank you. If you have any questions, I'd be pleased to try to answer them.

SENATOR FLOREZ: Great. Thank you very much.

Okay. Let's go to the Farm Bureau.

MR. CHRIS SCHEURING: Good morning, Senator Florez. Thank you for the opportunity this morning. My name is Chris Scheuring. I am with the California Farm Bureau. I am appearing on behalf of Cynthia Corey, our director of Environmental Affairs. As you know, the Farm Bureau's the state's largest general service farm organization. We represent approximately 85,000 members across fifty-six counties in this state.

Now, personally, I am an attorney and I am the director of the Natural Resources and Environmental Division at the Farm Bureau, which is a division that includes three other attorneys that work for me on environmental issues that affect agriculture. CEQA, of course, and CEQA documents are a daily part of our lives. In my shop, we are familiar with how they work.

I have taken a look at this Programmatic EIR for the light brown apple moth eradication program, and it appears to me to be a thorough and complete draft level review of the environmental effects of the alternate LBAM eradication methods.

Now, I say that without being a technical expert on some of the issues that have been discussed today. I did hear a lot of the technical comments that were just made by some of the experts. What I did not hear were a whole lot of concerns expressed with respect to process or the contents of the EIR on a procedural or legally sufficient basis.

It's worth noting that the public process here has been, and will continue to be, extensive. The California Department of Food and Agriculture, as you know, has initiated a 60-day public review period for this Draft Programmatic EIR. That's an initial fifteen days beyond the normally applicable 45-day review period; certainly, some allowance there for additional review of what is already an extensive document. And that's in addition to the seven public hearings to obtain public comment, which are currently underway. So, it seems that there is certainly the required legal process associated with this EIR, and we certainly encourage anybody in this room or elsewhere to engage in that. That's what a Draft Programmatic EIR is for. It's a document to comment on. It's a document

that the agency responds to. All of the concerns that have been voiced so far are well placed and should be a part of that final comment procedure.

Now, the Farm Bureau is completely aware of the concerns surrounding the handling of the LBAM eradication. Many of these concerns are philosophical. We represent both organic and conventional growers and have been in close contact with them on this issue for a couple of years now. We recently had a meeting with federal and state regulators seeking resolution on how to help our members cope in the quarantined areas with the extra burden of inspection and compliance that they're struggling under.

Just an anecdote: One of our organic members in Santa Cruz County, who sells locally to farmers markets, asked that we urge the state to reinstate ground-based eradication controls using pheromones to help those growers who are facing increased LBAM populations. She has to comply with the LBAM inspection and compliance even though she sells only at farmers markets within the quarantine area.

Now, the increased spread is now fifteen counties, as I understand it, as of today, and growers' concerns are certainly becoming widespread, especially as we enter the harvest season.

We at Farm Bureau believe that the LBAM can be eradicated, and we support the various methods outlined in CDFA's LBAM Programmatic EIR. This Programmatic EIR, I think, was clear that doing nothing is not an option. The no-program alternative in this document, which would expand quarantine detection and inspection activities without any area-wide biological or chemical controls by USDA or CDFA, is the option that actually has the most potentially significant environmental impact compared to all the other methods.

And in that vein, I'd like to bring to your attention a recent July 14 *Sacramento Bee* article, which you may already be familiar with, Senator Florez. The name of this article is, "The Capitol is Called the Delta's Top Pesticide Source," and this was in relation, of course, to the pyrethroids in the Delta. And this article—I can certainly leave a copy with you if you're interested—it discusses the recent UC Berkeley research that shows that retail pesticides used on lawns and

commercial properties in the Sacramento area may be the largest source of pyrethroids in the Sacramento-San Joaquin Delta.

Now, since the LBAM threatens a large number of endangered, agronomic, and ornamental plants, it is clear that expecting growers and landowners to deal with this issue on their own terms, with no governmental eradication assistance, will only lead to the increased use of more pyrethroids and even more noxious pesticides, I suppose, into our water system as compared to sterile moths and pheromones. Now, I've heard that disputed here, but it seems to me a bit of logic.

We completely support consumer education and prevention as the best control for invasive species. But education in this case can't be the only tool. We're probably going to support the approval of this Programmatic Environmental Impact Report with the methods detailed therein, after we've taken a look at the additional public comments that come in and we believe that the strategies outlined are safe and effective.

Thank you for your time and attention.

SENATOR FLOREZ: Great. Let me start at your end. How would you probably approve something you haven't seen? In other words, the decision. How does the Farm Bureau move in a direction that says, *We would probably approve*, if you haven't understood the decision of the Secretary—the EIR?

MR. SCHEURING: Based upon our understanding of the program and what we've read in the document and what I've heard today, I would imagine that we would probably—and I use the word “probably” for a reason, Senator Florez . . .

SENATOR FLOREZ: Right. That's why I'm asking. Why would you use the word “probably?”

MR. SCHEURING: Well, if there were any evidence that was brought out as part of this hearing or any other element of the public process that caused us to believe that the risks were overstated, as some have said today, or that the treatment measures were unnecessary, Farm Bureau is an open-minded organization and we would certainly entertain any doubts as to the program if we think they're well-founded. So, I advisedly use the word “probably” in that case, sir.

SENATOR FLOREZ: Okay. And in terms of what you called the “philosophical” issues with the EIR, does that, then, make the EIR. . . is the EIR not supposed to take in large philosophical issues in terms of paradigms and shifts and the distinction between eradication and control?

MR. SCHEURING: No sir. I don’t believe that is the case. I believe that an EIR is a CEQA document. It assesses environmental impacts. The larger policy questions, which are the philosophical questions, would be an element of whatever approval action is actually before CDFA, which, in this case, would be approval of some sort of program, either this one or a modified version of this one or some other program entirely. I would say that the philosophical debate over the use of pesticides—and I’m familiar with that; as I said, we represent organic growers—is not something that factors into CEQA analysis in legal terms, as a legal matter.

SENATOR FLOREZ: You said you are on the legal side and have looked at the EIRs in the past. Is that the role of the Farm Bureau?

MR. SCHEURING: Yes sir.

SENATOR FLOREZ: Is this EIR sufficient in terms of health effects, in terms of each probable or discussed method of eradication?

MR. SCHEURING: In the human health section?

SENATOR FLOREZ: Yes.

MR. SCHEURING: I can certainly not opine on that because I am not a doctor, technical expert, epidemiologist, any of those sorts of things. So, I can’t tell you the answer to that. In the first instance, that’s up to CDFA to evaluate when they close their process; and in the second instance, if this were to proceed to litigation, that would be up to the court to decide. I believe there is a fair amount of deference accorded to an agency in selecting among the opinions of competing experts when it certifies the final document, yes sir.

SENATOR FLOREZ: Well, I’m just wondering, in terms of the EIRs that you’ve looked at, does it conform with past EIRs that actually ask for the additional health effects of each method proposed?

MR. SCHEURING: Yes sir. Assessing the effects on the human environment is a requirement of an EIR. This one, in particular, goes quite some distance in that regard, where you might have a much lesser discussion of health

impacts in an EIR that is calibrated to address building a housing subdivision or something like that. Obviously, in this EIR, one of the front-and-center questions is: what's the likely effects to human health? So, I would say, obviously, this is a program that involves, among other things, the use of some types of pesticides. So, they knew they had to go there and they did. You wouldn't find that in an EIR for a different type of project necessarily.

SENATOR FLOREZ: Let me move on to the nurseries and garden centers. Your view of this, then, this EIR process, is positive? I mean, you like the way. . . other than some of the incorrect . . .

MR. DOLEZAL: Well, let me state philosophically that the nurseries like to ship clean plants, free of diseases, free of pests, to people and have them grow and be beautiful in their yards or grow into the crops that we love so much—the nut trees and peach trees and so on. Anything that stands in the way of our ability to do that, of course, is an impediment. We have trade issues that have already reared their head. We're being restricted from shipment to Canada, to Mexico, and now to individual states on the basis of LBAM—being in an LBAM quarantine with or without the pest being present on the nursery stock. And so, those issues are significant economic disincentives, from our viewpoint. We suffer real pain and frustration from that.

On a more broad sense, we're good members of the community, and we have no desire to inflict pesticide loads, air pollution, dust, noise, or anything else on our neighbors. It's not something that is built into this. Contrary, we're a green industry. We produce plants that sequester carbon and so on. So, as I look at this situation, the California Department of Food and Agriculture, a court demand was made on them to produce this EIR. This EIR would likely have been produced under any circumstances given; all the issues that had taken place, legislation here in the Capitol that was presented during last session and this session, and so on. And so, I think that the EIR is an appropriate response mechanism under CEQA, to be able to deal with the issues that are involved here.

From nurseries' viewpoint, our objective is to try to get to business solutions that work for the environment, work for our members, and accomplish the objective, which in this case is limiting a pest.

As a rebuttal to somebody's prior comment about this pest long being established in California in virtually every county, there are trapping programs that are out in every single county. They've been going on since before this pest arrived and since. The interesting thing about the light brown apple moth that have been trapped in those traps is that they come from fifteen counties with very thin trapping on the outer edges of the perimeter and very thick trapping, up to a hundred individuals per trap, in San Francisco and the East Bay. And so, you expect under those circumstances that that is a population and it is expanding. More importantly, there's no genetic diversity when the DNA is analyzed. They're all essentially clones of the same animal. So, they come from one strain. There's only been one insect found in all this trapping in which the DNA is different. That is not representative of a long-established population.

SENATOR FLOREZ: Thank you.

Are there any comments that you've heard that you'd like to comment on?

MS. REED: No, I think not. I'm fine.

SENATOR FLOREZ: Okay. Thank you. Appreciate the comments.

We'll move to public comment, and we'll do three at a time, if that's possible. So, we have Lynn Elliott Harding, Jane Kelly.

UNIDENTIFIED: [Inaudible.]

SENATOR FLOREZ: Really, what I'd like to do on this is just listen and get it on the record, and if I have any real big question, we'll butt in.

So again, Lynn? And Jane? Let's ask Glen Chase to come up. Thank you. We'll do three at a time.

MS. LYNN ELLIOTT HARDING: My name is Lynn Elliott Harding, and I'm a registered nurse in private practice in Oakland. I'm also on the steering committee of Stop the Spray-East Bay. I represent several different viewpoints. The first one is that I'm one of thousands of people who responded on a grass roots level to this problem and became sort of an accidental activist: people who weren't necessarily involved in an anti-pesticide movement before this. I'm also the daughter, granddaughter, great granddaughter of farmers.

I'm shocked to find that the role of CDFR and the Farm Bureau, which I've grown up seeing as supporting farmers, is not advocating for them in the way that

they think they should be at a federal level, a state level. That we're on, somehow, opposite sides of this is not understandable to those of us who are consumers of the produce, and feel like we're really joined with the farmers themselves in this issue because we recognize that the quarantines for them are draconian and inappropriate.

I'm also the mother of a teenager with asthma, which is one of the original reasons I got involved in this, because my sixteen-year-old son said to me, *If we live in a democracy, how can the government spray poison over our heads without our permission?* and I knew that I had to get involved.

Also, as a registered nurse, which is a science-based field, I need to look at the bigger picture on this too. The environmental—and I'm just going to reference one study—but the Environmental Working Group in 2004 did what they call "The 10 American Study," which you can find on YouTube referenced. They randomly selected ten cord blood samples—so, infant blood samples—and found in those ten samples 287 industrial chemicals in these unborn children, including pesticides, including DDT, which was discontinued thirty years ago. So, what we're looking at is increased cancer rates, incredible impacts even in the parts per billion, and their effects on the health of our children and our grandchildren. I think we have to look at this, especially when we're talking about spraying pesticides—SPLAT—which includes the pyrethrums that they were just talking about, and the impacts on our children, our grandchildren, the generations that follow us, particularly when a program has absolutely been shown to be unnecessary to begin with.

I think it's my profound hope that the CDFA is going to listen to you because their listening to us has been very much like today: they just haven't shown up.

Thank you.

SENATOR FLOREZ: Thank you.

Ms. Kelly. Thank you.

MS. JANE KELLY: Good morning. My name is Jane Kelly. I am also a member of Stop the Spray-East Bay Steering Committee.

I was going to talk about just one aspect of this program, but I did want to now just address the comment made by the gentleman from the Farm Bureau to

say that the EIR is thorough. He's an attorney, I am not; although, I am actually married to one. [Laughter.] There is a colorful term in the legal profession that I've heard and that is, "tainted fruit of the poisonous tree." And I think it applies here. What it means is that any decision or course of action that follows from a false premise is likely to be wrong. I would suggest to you that the EIR is based on two flawed assumptions. First of all, that the LBAM is a recent arrival. It is not. And secondly, that it can be eradicated. It cannot. So, I just wanted to address the comment made by that gentleman.

I also, in listening to the comments about OEHHA and about the whole health issue, I attended a meeting in Reedley, California, hosted by the CDFA. It was in the farm community. The CDFA was always accompanied by somebody from OEHHA. During the discussions and sort of the back and forth, the representative from OEHHA claimed that there was nothing at all harmful in the pesticide that was sprayed over our friends and colleagues in Santa Cruz and Monterey, even though it was sprayed in plastic particles that could be inhaled. When we challenged that statement, we met outside the meeting room afterwards, and we decided we would engage in a written dialogue. This is actually the written dialogue. It's twenty-eight messages over the course of three months. Most of them are from me requesting responses. The last response I had was August—of 2008, that is—in which I was told that I would be receiving the final answer by the end of the month. I'm still waiting.

So, when we talk about losing trust in our agencies, I think this is a pretty clear record. And if anyone would like it, I'd be glad to . . .

SENATOR FLOREZ: Yes, may we have a copy of that? That would be helpful.

MS. KELLY: Oh yes, I'd be glad to provide it to you. In fact, I can leave it here.

SENATOR FLOREZ: Okay, thank you.

MS. KELLY: One of the other things I just wanted to talk about is I wanted to speak very briefly to this very expensive propaganda campaign being waged by the CDFA. The recent TV ads and website are, in fact, just another scare tactic, and they are, in my opinion, a continuation of the gross exaggerations of the risk

this moth poses. The EIR is as flawed as the entire CDFA program to eradicate the light brown apple moth and as flawed as this campaign. The spin doctors received \$3 million to create an overdramatized fantasy campaign about hungry pests on the verge of devouring everything green. I could for no cost at all suggest that the reality is rather more like this: The CDFA, they're here and they're hungry; so hungry they are spending millions to try to convince you to be scared of a moth they've been unable to prove is doing any damage in California; so hungry they are willing to sacrifice the livelihoods of California farmers rather than abandon a campaign of toxic chemicals that is not needed; a chemical campaign that will plague people and our food supply for a long time to come if it is carried out.

The CDFA has actually taken the course so often taken when facts are not on your side: just gloss over the truth and promote through fear. I respectfully ask you to oppose this EIR and this entire wasteful and unwarranted program.

Thank you.

SENATOR FLOREZ: Thank you very much.

Mr. Chase.

MR. GLEN CHASE: Hi, Senator Florez. Thanks for allowing me to speak today. My name is Glen Chase. I'm a professor of systems management. My specialties are environmental economics and statistics. My expertise is integrating the complex sciences and using the information from the sciences and the constraints of the sciences and managing programs with that information.

My observations and conclusion in this situation, in this program: This LBAM program is not a program with a valid goal. The CDFA and USDA effort is a promotion to do the program. Doing the program is the true goal, not eradication.

Some examples in line with these conclusions: In 2007, the CDFA announced that, as mentioned today, the window of opportunity to eradicate was just a few short months. It's been almost two years now; there's no more mention of that window of eradication. Just continue so the program can go on.

It was also mentioned that at that time, aerial spray was the only way to eradicate; there was no alternative. When the court stopped the aerial spray—and the public possibly—immediately thereafter, the aerial spray was dropped and a sterile insect technology became the dominant. If you look at that, even at this

time, that's still in the developmental stage, not even yet in the experimental stage; so, they're basing an entire major eradication program, something that's in the development stage. Yet, examples in Canada, where they've tried to use sterile insect technology for a moth that locates exclusively in three crop fields, was a total failure. And that is so much easier than for LBAM, which locates across the state where people live. In other words, if we could eradicate LBAM, we could also eradicate cockroaches, spiders, ants; all the insects that live generally spread across the state mixed in with humans.

They've also announced that the pesticides were registered with the EPA. That was false. The Secretary of CDFA publicly announced for months on end that the pesticide use was nontoxic. During that time, the Office of Environmental Health Hazard Assessment, the Department of Pesticide Regulation, and the Department of Public Health had a report out that specifically labeled it as a Level 3 toxin.

The particles have been mentioned. You know, the particles end up, 50 percent of them are less than 10 microns. What that means is they can go deep into the lung, and from there, they're highly likely to get absorbed directly into the bloodstream; and at that point, whether they're toxic or not, simply the size of the particle creates the danger to the systems and the organs in the body.

Dan Harder spoke today. When Dan Harder's report first came out, the CDFA, prior to submitting it to their technical staff, they had their public relations person attack it in the media.

So, what I'm bringing to your attention is this method. I'm evaluating the management. The method is, the program goes forward regardless.

Also, the information that was submitted for the reclassification petition, to my understanding two weeks ago, has still never yet gotten into the hands of the National Academy of Science. Only their description of it. It's almost like the prosecution delivering to the jury the defense's case while they're not here.

And I want to read this to you, the actual statement. It's been mentioned a couple of times today. This is the report, one of the three done by the three agencies, and their conclusion. Quote: "It is not possible to determine whether or not there is a link between any of the reported symptoms and the aerial spray."

So, what they're saying is they couldn't tell if there is or there isn't. Immediately afterwards, CDFA falsely reported to the public that the three agencies reported there was no link, implying that they hadn't. . . in other words, that's what they stated and then assuring them: *We told you so, that this was safe.* These are false, again, with the management.

I want to comment a little bit on the damage inaccuracies. We keep going back to New Zealand. The CDFA took this period that you heard about today when they literally wanted to get rid of the bugs, and they used a broad-based organophosphate and it killed many bugs. It killed everything and the predators. The CDFA took the cost of applying that broad-based pesticide and represented that as the damage from LBAM in New Zealand, when it had nothing to do with the damage. It had to do with the cost of the spray. They brought that cost to California and escalated it by the number of acres in California, and that's where the CDFA comes up with their potential damage in California, the millions of dollars.

Prior to the two court hearings, I sat through many hearings, meetings, throughout the Bay Area, and I heard reports similar to the one we heard today from the fellow in the middle talking about damage. I've seen pictures of LBAM damage, reports of LBAM damage, that were delivered. When all of this information was brought into the court, it was all thrown out of court, and the court had the finding of "no damage." There has never been any official damage. The most recent damage they're talking about—cane berry damage in Watsonville—is damage that the CDFA is not allowing the individual farmers to remedy, and then they're attributing that damage to LBAM, when there's absolutely no proof that LBAM has any part of it, let alone some particular percentage that would be the case in a legitimate study. So, to date, the courts threw out all the claims; the pictures were falsified. When we asked to see the pictures to get the places and the dates—*Can we see?*—they wouldn't submit them. They pulled them back and stopped distributing them.

I'm bringing this to your attention because there's a certain standard that generally you would expect to hear when you talk to a certain agency, and when these standards haven't been met, and when a common person would say, *This*

seems to be deception, I would agree. And so, we have to look at this agency and their methods in a different light.

I've read, again, in yesterday's press release that this moth can damage over 2,000 plants. Well, I suppose if you gave me about two hours in here, I personally could damage all the chairs and the art, but I never do. And up to 2,040 plants also include zero. I want that noted in the record, that zero is included in up to 2,000.

My suggestion is a program investigation by an independent agency where the testimony will be under oath, and false testimony will result in perjury charges. This will separate the real scientists at the CDFA from the management of the CDFA, because the staff scientists will not perjure themselves to support the promotion for this program. At this time, the scientists are pressured to promote this program. Very similar to the farmers that you've talked to. I've talked to a number of farmers over a year ago: *Oh yeah, we need this program; we've got to do it*. As I've gotten to know them—and they trust me and they know that I won't give their names and deliver it in a hearing like this—they now admit to me that this thing is absurd, there's no damage, but that if they're the one that stands out and complains, the inspections and the quarantines and the bullying will put them out of business. And this is the pattern that we've seen over and over and over again. And the farming, the growers that are begging for this program are not begging for it to stop the LBAM damage; they're begging for it to get the CDFA off their back. It's a reasonable response to extortion and to bullying.

I want to make a few comments on the items that have been mentioned today. We've talked about hundreds of reported illnesses. Had there been a means for people to report illness, we could say there were hundreds of reported illnesses, but there was no means. The CDFA sprayed and left. So, the 643 people that reported, each one took the initiative to find an agency that would even listen to them. Okay? So, when we're talking about how many illnesses there were, it's certainly not hundreds. As I mentioned, I teach graduate level statistics in the university. From my personal experience, because I'm very active in this, I've met, now, slightly over two hundred people who felt they got ill from this. Of those, two of them reported. So, this is certainly not scientific. It was never

intended to be a survey, but two of about two hundred; one in a hundred. So, if we had six hundred reports, we could project that to tens of thousands; somewhere in the area of 60,000 people. That seems to be more realistic, if you lived in the area of Santa Cruz and you were paying attention.

I'll comment on the rural aerial spraying. There's hardly an area in California that's not within three-and-a-half miles of a rural area. So, when they talk about stopping the aerial spray on the population, that's not candid because it drifts over three-and-a-half miles, by their measurement. And I don't mean because of the wind, but being because of the nature of aerial spray, it drifts. So, anyone living within three-and-a-half miles, which is most all of us, of a nonpopulated area are still going to be in the aerial spray.

It was mentioned here the official reasons for the birds dying had to do with the red tide and the bacteria in the red tide, and what wasn't mentioned in the report was that same goo that was the bacteria was also inland on the porches and the kayaks and the patios. So, unless the water is flowing uphill these days, the problem came from inland into the ocean, not from the ocean in. And that really disappoints me because the UC professor that wrote this report neglected to put that in his report, and then a lot of other state agencies that are funded by the same places that this agency is funded by signed on to that report.

Today CDFA did not attend. I've been attending the meetings since fall of 2007. The pattern has been identical. Unless the CDFA can control the meeting, their people speak and then the public is limited to ninety seconds or two minutes, where their questions aren't responded to. They say something, the frustration comes, and they sit there and they let them speak and then that's it. So, not once since the program started has the CDFA ever sat in the same room with this expert panel that you just sat with and responded so that the commonsense. . . they've only done it on a one-way delivery. And consistently, when they've gone up in front of a hearing where they're responsible to respond to someone like yourself, they've always said, *We've made some problems with communication; we'll do better to communicate.* The problem has not been communication. That's been the excuse for the lack of science. And one example is, with all these concerns about

this EIR and this program, the one they picked up was the noise from the airplanes. That was the greatest concern.

We've talked about: why are they doing this? Is their science that bad? Are they stuck in it? They may be, some of them. But I would suggest to you to look at the numbers and recognize that the annual dollars that they will receive into their budget every single year are greater than their current existing general fund's budget for all of the programs they've got in every area across the state. That is certainly a significant motivation, as is the pressure from the pesticide companies that are very, very powerful in this state, to enter into contracts. And the pesticide company, in the actual activity in Santa Cruz, it was about 85 percent of the total went to the pesticide company that supplied the CheckMate formula.

It was spoken here about the problems with spraying and doing all of these things. The single most important item to handle LBAM is to monitor it. You have to know how many there are. Tortricids, leafrollers, their population fluctuates. It's cyclical. Look worldwide. You know, read yourself. This moth, like they say, it's a background insect. We'd never know about it if the CDFA hadn't brought it to our attention. So, we need to monitor it so when it hits the high cycle, then we watch and see if it does anything. Typically it won't and typically the methods used for other insects covers the light brown apple moth, as it does the hundreds of other leafrollers that are related to it. But we have to be able to monitor it. When you use the pheromone, you give up the ability to monitor. And as you know in war and communications, you've got to keep the communication open; and what this does, it closes the communication. And based on the other methods of this management system that CDFA is demonstrating that they want to do, it reflects the same pattern of not wanting that communication, not wanting the monitoring to be seen. That's what it reflects, in my expertise.

Laird, before leaving office, had a bill passed that rather than a bug coming up and making such a quick decision, we should have an invasive pest commission that looks at these things well in advance and comes up with a plan for them, which theoretically is a great idea; it's a good planning tool. Unfortunately, the commission has been formed; people were put on the commission; and from my opinion and my interpretation who these people are,

they're people that are ready to simply make the decision that CDFA wants in every single invasive pest that comes down the line.

And Senator Florez, I want to be a little humorous on this, but your hearing on possibly eliminating the CDFA and certainly affecting or reducing their budget to cooperate with all the agencies that are reducing their budget, since that time, they have gone on an incredibly aggressive offensive campaign to demonstrate that they are indispensable, and the USDA has stepped in, in a management sense, to contribute. You've seen examples of that with this "hungry bug" program. You've seen examples of all of a sudden, they found more pests since your hearing than they've mentioned in the media for the last few years. And so, LBAM is no longer the main one because they've got tremendous opposition. They've made it broad.

The motivation for this campaign was to keep people from bringing invasive pests into the country. Well, if you're going to spend money to do that, it's so obvious that you would spend the money at the airports and at the ports of entry and the people returning from specific countries where those insects come from rather than to the general population which a tiny, tiny, tiny fraction of which are going to be leaving the country and returning during their memory of this ad campaign. This ad campaign, from a management expertise perspective, is simply to get the people aware that there's these invasive pests, so when they see something like an airplane or a truck with a sprayer, it will desensitize them and give them some understanding of, *Oh, they must be taking care of this.*

The CDFA will also mention the hundreds of eggs that each moth puts out. If you do the math real quickly, you take a hundred eggs and then the next one has a hundred eggs and then another hundred eggs. You know, it sounds pretty serious. But let's remember that nature has insects. The ones that produce a hundred eggs are the ones whose offspring don't live and they have to produce a hundred to get one to possibly carry on. Humans have a very high rate of continuing the life cycle. That's why we generally only have one. But the thing is, what bothers me significantly is, these are the kind of information, *With a hundred eggs each!* and people that don't understand math can still go, *A hundred times a hundred times a hundred gets awfully large awfully quick.*

The no-action alternative. It's identified as a disaster. It's going to be a catastrophe here. What they've done is they've identified the no-action alternative, but they've continued to keep the quarantines, the inspections, and all the bullying methods they're using on the farmers with the no-action alternative. The no-action alternative we're looking for is get off their farms and monitor. So, I want to be very clear that when you look at this Environmental Impact Report, it has misrepresented the true no-action alternative that all of the people here today have asked for.

And I'll finish with one statement of Secretary Kawamura on a CBS investigative report by Anna Werner, who has done probably the most significant investigation in this. She asked him to give some substantiation of some information: *How do you know this moth's going to do this? How do you. . .? How do you. . .? How do you. . .? Give us some proof.* And he says, ". . . those of us who believe. . ."

SENATOR FLOREZ: Thank you very much.

MR. CHASE: Thank you so much.

SENATOR FLOREZ: You do know that's all on the record, right?

MR. CHASE: That's why I'm here.

SENATOR FLOREZ: Great. Thank you very much.

If we could have Helen—I saw her here—Kozoriz, and Michael De Lay come up, and Frank Egger, and then the last two, after this panel, will be Yannick Phillips and Gary Lasky. And then we'll close.

Helen, thanks for being here.

MS. HELEN KOZORIZ: Thank you. My name is Helen Kozoriz of Stop the Spray-Alameda County. I'm actually here to read a statement prepared by Don't Spray California, who were unable to attend today's hearing.

Don't Spray California represents a group of people living in the LBAM quarantine zone, most of whom are disabled by pesticide poisoning. The continuation of CDFA's LBAM eradication program is a direct personal threat to the health and lives of our communities. Over the last decade of exposing many such government pesticide programs, we have found that false emergencies, like the LBAM program, are manufactured to secure funding for the agencies involved.

USDA recently launched an expensive advertising campaign to convince us that foreign insects will invade if we don't let them apply pesticides. This campaign represents the interests of the pesticide industry to which Invasive Species Councils have well-established links.

Eradication programs are being justified with trap finds which trigger quarantines and forced pesticide applications. However, increased numbers of insect finds do not reflect that numbers of traps are also increased. Furthermore, consistent finds in massive trapping programs is statistically expected in any naturalized population of insects.

Trap finds do not justify eradication programs. Trap finds determine the presence of an insect, not whether it is doing damage, likely to do future damage, or whether the local ecology is keeping it in balance. There is no evidence that LBAM has done any damage. In fact, CDFA continues to receive funding to develop a reliable identification method to identify LBAM.

Independent scientists have determined that the LBAM program is not based on sound science. Hundreds of people have reported illness from exposure to pesticides used in the LBAM program. The environmental devastation was obvious to all who witnessed bird and bee deaths, including the worst red tide in decades immediately following aerial applications on the Central Coast. Overwhelming sociopolitical opposition alone should have ended the LBAM program, according to USDA's own emergency programs manual. Instead, we are forced to pay with our health and taxes for CDFA and USDA's chemical dependence.

CDFA and USDA's reliance on monocropping increases vulnerability to pests because such fields lack a biodiverse self-managing ecosystem. Organic growers rarely worry about pests, but they are targeted and harassed by CDFA and USDA eradication teams. They are forced to bear the brunt of the burden of quarantines with the associated requirement to apply pesticides and destroy their crops or lose their farms and livelihoods of all who work there.

Many of the insects we are told to fear have natural cycles where their populations ebb and flow. Eradication and control programs interfere with these cycles and with nature's ability to adapt to change.

Nature does not operate according to industry's fiscal cycles. Moreover, the industry's unwillingness to share some of the abundance of the harvest with the ecosystem at large is unrealistic. The insistence that everything grown in a field must go to market is a policy that causes more damage to the environment than any insect ever could.

Thank you.

SENATOR FLOREZ: Thank you.

Yes, thank you.

MR. MICHAEL DE LAY: My name is Michael De Lay. I live in Pacific Grove, on the Monterey Peninsula. I'm an individual who is one of the 643 families—it's not individuals, it's families—that we contacted Mike Lindberg back in September of '07, after we were sprayed by CheckMate OLR-F, reporting injuries, because both my wife and I suffered harm.

Frankly, the only thing I want to say with that is we believed that the CDFA would be a trustworthy organization back in August of '07, at the end, when they said they were going to aerial spray us because *It's just a pheromone, it's safe, it's mostly food-based product, and you won't even know we did it.* As an individual kind of trusting that, with some concern, and a husband with a wife that had suffered from asthma most of her life, we had concern about it. They did spray us. I took her out of town, actually, to avoid the spray, so that she wouldn't have any exposure to it; and without knowing it, their spraying program was extended one night, and we returned that night expecting to be free from what we thought was small risk. She became very ill as the airplanes bombarded our house. I'm on record with all that, so I'm not going to spend a lot of time discussing it.

But I do think it's important to come here and put on record that people are harmed. I was harmed, my wife was harmed. I was harmed at the second spray with CheckMate LBAM-F. I suffered harm from it. We personally believe—and I'll stress that word "believe" because it continually runs through all of my studies and research in looking at CDFA and USDA—but I believe that we were harmed, and we are still working to recover from the harm of the exposure of these two products.

And I also know, from talking to other residents in my community, that they were harmed. In fact, today I can go around the town and bring the subject up and find people continuing to talk about the harm they've suffered—this harm that is reported by CDFA to not have really occurred, or leaving that impression. You know, they never talked to any of us. They never called us. They never questioned anything, and we were completely available to them at all times. And that gets kind of frustrating,

The other thing we did out of necessity—we thought after the spray finished the second time that this would be the end of it, but when they came back in December and told us they were returning April of '08, once a month for the next nine months, for the next three to five years in aerial spraying us, that left me and my wife with the conclusion of two things: either I close my business of 38 years in the town and move, or stop them. That's all we had, because we believed that my wife would die as a result of the aerial spraying, from our experience with it—which I haven't gone into—if we stayed in the town and let them do it.

We started the Coalition of California Cities, my wife and I, in March of '08, with an idea, kind of a test, kind of an experiment: What if we got cities to pass resolutions in opposition to aerial spraying? Could that even work, and would it have an impact? We didn't know. We started it and it was amazing to see. Two of them sitting next to me, people I didn't know, that I have since come to know and respect greatly, went out to their communities and their mayors and requested them to get involved in this issue. In three months—mind you, three months—thirty cities and three county boards, ninety organizations, passed resolutions in opposition to the aerial spray program, and most of them have other questions and doubts and statements as to the continuance of the program by these communities. As a result, 2.4 million Californians became represented by their local elected officials in opposition to the aerial program, and guess what we discovered? That's belief of consent. That's constitutional. That is the Constitution of the State of California being represented the moment the word "belief" is brought into the issue. And I understand, by being in contact by representatives in this building, that belief occurred.

We then started looking at that experiment. What happened? I didn't know that could happen but became very shocked and studied. So, I started looking back in history, just looking at the Constitution. And I have to admit—I apologize as a citizen of California for not being involved in this body more than I was in the past. I never was political or active in anything prior to the threat that came to us. And I was wrong because I've discovered that this nation was founded under the principle that people do have Creator-given, certain inalienable rights. Not everything's a right, but certain things are inalienable rights. And I own them. They're mine. They were given to me at birth, and nobody in this country or world can take them from me, and I won't let you.

And guess what? I've also discovered everybody has the same right that I do. Everybody does. And I'd forgotten this. And I'm now to declare again today—I declare my individual certain right given me for health, promise to be protected by sworn oath by every member of this body, including the Governor, to protect that right; and that right is above any law, regulation, code, ordinance, executive order, emergency order, order of the President or the Supreme Court. That is the highest law that we hold in the foundation of this nation. It truly is. I'm sorry I wasn't here to watch and help along the way. I'm here now, and I hope other people—Californians—will wake up, not to come here and bombard you guys. You guys aren't at fault, as I see. Most of the representatives here are trying as hard as they can. But the people aren't here. Only the organizations, the groups, the lobbies, the companies are here. The individuals aren't here to declare their right. Rights are not made by laws. They're only declared. I declare mine.

A few other things, just in closing: I'm concerned that throughout this whole process, nothing has been discussed obtaining my consent to expose me to pesticides and insecticides that were created only solely for the use in agriculture in fields and crops, that were never designed to be exposed to humans in their homes or residences or churches or schools or hospitals. Never have they been designed for that. And it's just unbelievable to me that any of us sit here, even at this forum, and discuss: *Can they do this in our communities?* It's outrageous! It's unethical! It's unprofessional! How do you take untested pesticides only declared

to believe to be safe? You're back to the word "belief" because there's no factual evidence. I couldn't find it. I looked and I've looked for two years for the proof.

I find Osama El-Lissy, Executive Director, USDA invasive species program, sitting next to Jackie Speier in San Carlos in September, which was the only forum that we attended that we could ask questions direct, straight on, to any official representative of our system of government and expect an answer. And we asked him: *When is testing done on humans with regard to any program you've established today or in the past for any pesticide or insecticide that you've done? When was the testing performed?* And Jackie Speier made him answer, and his answer was: *concurrently with the program*, which only confirms our discovery in looking for the facts. It's against the law to test pesticides on humans.

In fact, it's so obvious to me that, gee, CDFA will never test pesticides in any of their programs because the moment they do, they'll discover the harm that they cause and establish that fact, and that will shut down any program that they care to begin with. Because at this point, we cannot find any pesticide that doesn't have any minor to moderate harm. Their EIR actually even admits to the harm it will cause. It seems that it's okay to deny my certain individual inalienable right that I own by some legal regulatory process and say that the process exceeds my right; they can ignore my right and cause harm. And a certain amount of harm is okay as long as the economic benefit is greater than the harm caused. That is what they say in their regulatory process when you read it. That's what EPA says when they do their testing of pesticides. They test them, when? Ten to fifteen years after they release them. And what's the test? What's the economic benefit? What's the harm it caused? If the economic benefit outweighs the harm, it's okay to continue the product.

It's outrageous that we even sit here and discuss this kind of exposure. And for that reason, I stand here and declare, I will not let CDFA, USDA, or anybody come into my town and expose my body to untested pesticides without my consent. And that statement, the only action I know we can take now, after we've. . . no, I'll say one other thing, and then I'll quit. Aerial spraying was, without a doubt, the easiest program to develop belief of consent on because it was so simple to show that nobody wanted airplanes flying over their houses, and

belief of consent was so easy to develop, we had no idea. In fact, if they want to continue the aerial spraying, it is the greatest platform they can give me. I'll have five million people represented in a few more months and probably within a year at least ten, if they want to continue aerial spraying. I don't want them to do that. I don't want the harm to even be out there to the people. But I invite them to do so because I'd love to get those numbers. Because, if I had those numbers. . . now, it's not me—I keep saying “I”—I forget. The Coalition of California Cities was nothing but a mirror. We only reflected what the mayors and the city councils did in all these communities. The communities did it. I didn't. We only reported it. It was true. It's real.

Mike Lindberg only wanted me to read one thing. He couldn't be here today. The author of the report reporting the 643 families, which we're in there, he basically says, “The USDA/CDFA LBAM policy and program have no credibility in the terms of ensuring the public safety because they won't take responsibility for injuries caused by the aerial spraying program in 2007, which three other California agencies said could have been harmful to sensitive individuals. Also, the EPA withdrew its exemption of the product that the CDFA used when faced with a lawsuit challenging the product safety.” I understand in May, CheckMate LBAM-F and ORL-F were removed from exemption and banned for use in the LBAM program.

Thank you.

SENATOR FLOREZ: Thank you.

MR. FRANK EGGER: Hello, Senator. Frank Egger, president of the North Coast Rivers Alliance, 13 Meadow Way in Fairfax.

The CDFA continues down the same path they started in 2007—an unnecessary and unsafe eradication program to rid the state of the so-called dreaded light brown apple moth. When the courts shut down their unlawful project last year because of no EIR, they were undaunted. They wanted to hire a consultant to prepare their EIR with the results they wanted: an LBAM eradication program. Entrix was chosen. The Entrix website tells us why they were selected. In Entrix's own words: “We can meet or exceed the expectations of

our clients . . . to help [our] clients develop successful projects while meeting the demands associated with ever-changing environmental laws and regulations.”

This EIR has been predetermined. It’s the CDFA’s green light for its unsafe, unnecessary eradication program.

As we poured over the Draft Programmatic EIR, it’d become so obvious that the EIR is not an unbiased, independent study document, but rather a sales job for their eradication program. The new pesticide of choice is Hercon Bio-Flake LBAM. Only two inert ingredients are identified: Micro-Thic and Micro-Tac. It states no toxicity information exists for Micro-Thic. It states, also, that all inert ingredients in its formulation are on the USEPA exempt list. That’s exactly what the CDFA told us about CheckMate, and the EPA also told us they were exempt.

The impact on salmon, they address it in the Draft Programmatic EIR: “Such a decline of salmon is from many sources. This program’s incremental contributions is less than significant.” So, what they’re saying is, *We’ve already lost our salmon and a little more poison’s not going to hurt them.*

The CDFA is holding our farmers hostage with unlawful quarantines. They have exceeded their lawful authority. The CDFA has become the judge, jury, and executioner. There is basically no crop damage in California. This whole program is about hundreds of millions of dollars of federal dollars to supplement the CDFA’s budget. The Governor is forcing us to close state parks at the same time his Department of Food and Ag is ignoring the real issues: the health, the safety, the welfare of California residents, the significant adverse impact on our land, our water, and our farmers. When we challenged CheckMate in federal court in San Francisco in November, the EPA, rather than prove CheckMate was safe, withdrew its previously approved exemption. As it turns out, the CDFA said CheckMate was safe, but by law it could not be sprayed on conventional crops, let alone organic crops.

The sterile insect technique is bizarre. Take the Sonoma-Napa focus test that they want to do. Dumping 1,400 moths per acre weekly over 3,000 acres for 27 weeks will put 113,000,000 irradiated moths along the Sonoma-Napa border. The CDFA will create the problem where none exists.

California has been presented with a Programmatic EIR that is woefully inadequate. I will copy your office with the North Coast Rivers Alliance comments on that draft.

Thank you very much, Senator.

SENATOR FLOREZ: Thank you. Thank you all. Appreciate the testimony.

Okay. Let's go to our last two witnesses: Yannick Phillips and Gary Lasky. And then we'll close the hearing.

MS. YANNICK PHILLIPS: Senator Florez, thank you very much for hosting this, and your staff for preparing and hosting this great hearing. My name is Yannick Phillips, from Sonoma County. I'm a third generation Californian, where my grandparents farmed citrus in Fallbrook. And I'm a fierce supporter of California agriculture.

I am here today on behalf of the farmers, the growers, the nursery owners, the farmers market managers, agricultural commissioners not present in this room, to give testimony. They are not here today in fear of retaliation from CDFA. They're not present in this hearing to state their real opinion, and that is that LBAM is not a significant threat to California agriculture.

As stated by numerous farmers, CDFA is a nuisance to them with their restrictive quarantines, and from the ag commissioner's perspective, CDFA's LBAM eradication program is, and will continue to be, a tremendous burden with additional paperwork and inspections to each ag commissioner who encounters LBAM in their counties, taking ag commissioners away from truly doing their job to support our farmers.

In the past, I have called dozens of New Zealand growers, farmers, governmental officials, New Zealand entomologists, who state, and I quote: "LBAM is not an issue." "This insect is like aphids." "It's insignificant." Recently, with the Watsonville berry per se "damage," recently I've contacted New Zealand cane berry farmers, apricot farmers, cherry, blueberry, strawberry farmers, and they all state, and I quote: "I don't think we have this insect here." "You are wasting your time calling me," and "LBAM is not an issue here." And there's others.

CDFA needs to take each insect case by case, and we need to nip this eradication program in the bud.

In closing, I would like to invite the Farm Bureau—I spoke to Chris, I think Chris Stirling [Scheuring] is his name—outside this room. I'd like to invite the Farm Bureau, the Nurserymen's Association, the fruit and vegetable commissions and, in fact, all the agricultural interests under Kahn, Soares and Conway, as well as the Western Growers, that we demand, together, protection for their members and demand that CDFA push the USDA to reclassify LBAM, as well as urge them to unify with our trading partners and have LBAM immediately become a nonactionable insect. Those of us who are fierce advocates for California agriculture would like to focus and deal with the real issues at hand for our farmers, and that's water and their current financial hardship.

So, to CDFA, while you would like to have us believe that a three million media campaign—"hungry pests"—and millions of dollars for LBAM eradication program is needed, many of us believe you are wasting tax dollars and putting fear into California citizens and putting our state's greatest assets in great jeopardy, that being our farmers.

If I can just say a couple of more things. To Chris from the Farm Bureau: In Sonoma, grape growers have told me that they are spraying more pesticides, not because LBAM is a threat but because they're scared to death of being quarantined. So, it's not necessarily that citizens on their property is going to be spraying more. The farmers now are scared to death to be quarantined. They're spraying more.

And Senator Florez, since my testimony is on record, I would also, for the record, like to state to CDFA that I and Sonoma County will not allow CDFA's LBAM eradication program to enter my county. They have my word on that.

Thank you very much.

SENATOR FLOREZ: Thank you.

MR. GARY LASKY: I want to first thank everyone for this wonderful presentation and for taking your lunch hour. I'll keep my remarks brief.

My name is Gary Lasky. I live at 4677 North Stafford Avenue in Fresno.

Fresno County has hundreds of farmers, and our commercial crops were worth more than \$4.8 billion in 2006, according to our county farm bureau.

I wish to make two points here today. First, an LBAM quarantine would hurt farmers in Fresno County and create a huge burden for our county's agricultural commissioner who's responsible for overseeing hundreds of farms with a very limited staff.

Second, the LBAM aerial spray program has created a legacy of mismanagement and damaged the ability of the state to proceed with any further LBAM eradication methods. This is due to a loss of public trust in CDFA and the state government in general. This Programmatic EIR only compounds this mistrust because, as we've heard today, it basically relies on the same nonscientific bases that it relies on to produce these conclusions.

We've heard of the environmental damage from the aerial spray to seabirds, pets, and other wildlife where I lived in Santa Cruz. But the damage from the aerial spray is not limited to just these impacts. There's lasting political damage to the credibility of the State of California. The state is responsible for a panicked population—that's not an exaggeration—as it continues to insist that the spray is merely a benign activity. I know Santa Cruz residents who continue to live in a sustained state of high anxiety of the thought that they could be exposed to the aerial spray in the future. This mistrust by the public extends beyond CDFA to state government. In fact, CDFA could not more effectively unravel popular support for government if it set out to try to do it. CDFA's now calling for the use of the other benign methods to contain the LBAM, but in this state of crisis, this crisis of credibility, the public is really not prepared to buy whatever they're told. The outrage and fears—they feel like they're human guinea pigs. These are justified until the state begins to recognize the precautionary principle.

As a final point: I'm disturbed to see a pattern from CDFA and other government agencies in the state that attempt to evade the California Environmental Quality Act (or CEQA), the environmental review process in general. CDFA attempted to use the so-called emergency situation to rush through this eradication program without an EIR before. Now we learn that the science for such a campaign is lacking. It's a bedrock principle of the California Environmental Quality Act that an EIR must examine a wide range of options when considering a proposed project, including the no-project, no-program option.

The no-project option always evaluates existing conditions. This is the only way to develop a baseline so we can know what the incremental impact of a project will be. As we've heard, the no-program option in this EIR states that there will be widespread use of the organophosphates, which is speculative. Technically, you would say, *Okay, that could be another possibility*, but it's not the no-project option.

Another core principle of CEQA is that the EIR needs a stable and consistent scope in order to evaluate the impact of the project. This is lacking from the LBAM EIR as well. We really have no idea where the spray would occur. We don't know its scope. There's no definition of urban or rural. And in my studied opinion—I've studied environmental law for fifteen years—this EIR does not stand up to close scrutiny.

In conclusion, the public and the reputation of government have been harmed by the CDFA LBAM program. This damage is lasting in terms of credibility, and the LBAM Programmatic EIR lacks the most basic elements required by CEQA. We need to rein in an executive agency that ignores and distorts good science in favor of scare tactics—the shock doctrine—as an excuse to bypass basic environmental safeguards embodied in California environmental law.

Thank you very much.

SENATOR FLOREZ: Great. Thank you very much.

Okay. We're going to close the hearing. It is 12:10; we started at 9:10. It was very extensive, and I do appreciate everyone's comments on the record. I would ask the sergeants, if possible, along with staff, to expedite the transcript on this if we could—very, very important—and to make sure it's online, on our sites here in the Senate. I'd like to see if I could hand-carry that to the Secretary myself and have a discussion with him about some of the recommendations put forth here. I'm sure I won't jeopardize any litigation in talking to our Secretary as the chair of the Food and Ag Committee in the Senate. But I would like to have the transcript in hand, and I'd like to get his comments back on the transcript itself, to questions that were raised here. That would be very important.

I will say, also, thank you for traveling and being here. I want you to know that this is not one of those hearings where we are trying to, in essence, get ahead

of an issue that's extremely unpopular. What we're trying to do is to find a more credible way to deal with this and other issues in the future. And there's lots of good recommendations here.

I do want to thank the folks who came from the academics as well who've given us more than ample evidence, having worked for CDFA for quite a bit, that we are headed down the wrong path and expending a lot of money and effort and time doing this. Sometimes you have to pull the plug on things and you have to start over. Hopefully, this will give us an opportunity to credibly put our control programs on a better path. And this has been extremely helpful.

I do want to thank everyone for putting your comments on the record. I think you always find better solutions once you read the transcript. I don't know how, but every time I've reviewed a transcript, you catch things you didn't catch at the hearing, and it leads to more questions.

So, I'd like to thank everyone for taking the time to do that, and we're going to adjourn the Senate Food and Agriculture Committee. And we will see you somewhere before September 28th to go over all of this. We'll notice everyone, but we'll hopefully be back here with the Secretary and others. It's hard to jeopardize an EIR the day before the due date. So, let's make sure we do that. Okay?

So, we'll adjourn the hearing. Thank you.

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