

**SENATE COMMITTEE on FOOD and AGRICULTURE**  
**Senator Dean Florez, Chair**

**Oversight Hearing**

***Evaluating the Need for California Department of Food and  
Agriculture's Light Brown Apple Moth Eradication Program:  
A Review of LBAM Environmental Impact Report***

**March 23, 2010**  
**Sacramento, CA**

**SENATOR DEAN FLOREZ:** . . . all the way through, and so we made the latter decision. So, I want to thank you for your patience.

This is the Senate Committee on Food and Agriculture. Today's topic is "Evaluating the Need for the California Department of Food and Agriculture's Light Brown Apple Moth Eradication Program," and it's a review of the LBAM Environmental Impact Report.

I would like to thank all of you for coming today. I know some folks traveled some significant distance to be here. I'd also like to thank the Department as well for being here. We have some questions on the sufficiency of the Environmental Impact Report that we brought up at our last previous hearing on this topic and, as I remember it now, that we have a final EIR. We're here to find out a little bit more about the findings, about the report, and CDFA's future plans for their LBAM program.

Overall, the goal today is to evaluate the need for CDFA's Light Brown Apple Moth Eradication Program in its entirety. Obviously, the committee today has jurisdiction over CDFA, and we have, of course, been awaiting the final EIR product, and we will have some related policy questions on that product. I can tell you that it seems to me that this committee would not lean towards any sort of program that would cause human harm or environmental

damage. This is a new Food and Ag Committee. We're very concerned about these issues.

I do want to make sure that we have the Department on the record to explain and to talk to us about the evaluating factors that were considered in this particular EIR. It's a goal, obviously, for this committee to be as open and transparent as possible, and we believe that should hold true for the EIR process itself. Obviously, we're going to hear from farmers and constituents who are affected by some of these decisions by CDFA. We'd like to learn more about the impact of these decisions based on the EIR, not only to business operations but to the economy as a whole.

Clearly, I can tell you that we will continue to monitor CDFA's activities as they relate to the LBAM program. We will not, of course, hesitate to have future hearings on this issue in order to get final actions regarding the EIRs. This won't be the last hearing that we have on this, I'm sure. And of course, we're interested in public comment today, so if anyone would like to make public comment for the record, we'd be very interested in making sure we have that as well.

So, that being said, we have a revised agenda. Hope everyone got that. We have four panels today, and we're going to start with James Carey, who's a professor at the University of California, Davis; and Erin Morin, who's an avocado grower. So, both of you can come up and we can begin the process.

Thank you for joining us.

**PROFESSOR JAMES CAREY:** Thank you for inviting us. Erin is actually going to start.

**SENATOR FLOREZ:** Sure, that's fine. Just state your name for the record. As I said, we're building a public record.

**MS. ERIN MORIN:** My name is Erin Morin. I'm with the G3LLC. We're avocado farmers. I've been in the family business since 1968.

Just to let you know, I have a few things regarding the medfly. We're currently under quarantine right now and we're finishing up. It's been about 4 to 5 months since we've been under quarantine. When CDFA notified us that

we had to come to the meeting, they basically sat us at the Pala Mesa Resort (a hotel) in the lobby, or the area, and they basically had a guy there. I forget his name, but he was for the San Diego County regional area, and their offices are in San Marcos. Basically, all the farmers came in, and they weren't really pleased about this. So, he just stood up and said, *Well, this problem happens to be on your end of the woods*, and said that, *You're going to have to buy the malathion for regular people and the Spinosad for the organic growers*. Unfortunately, the cost, that I have here, with the treatment of the malathion for 5 applications equals \$60 an acre; 6 applications equals \$72 an acre; 7 applications equals \$84 an acre. So, what they told us, it would be about \$800 a gallon.

They also told us that they're going to have—we're going to have to set up an appointment with one of the inspections, and the inspector comes out and he will watch the farmer—or the person who is licensed for the pesticides—stir it up. *But if you pre-stir it before they hit your property, you're going to have to dump it; and you're going to have to dump it and then it goes into the water which goes into reservoirs and all other sorts of things. We don't even know where it goes*. Also, they told us, *This is all on you, you got to afford it*, and we were basically just railroaded. I felt we were railroaded. I didn't feel that we had a fair shake in this.

I was 500 meters away from the hot zone. The hot zone is where they detect the fly. I have maps, I have things with me that I brought. I will tell you that it was just heartbreaking to see a person from the government treat us like that. We're farmer-growers. We're people to supply food for our local areas and from our county. We want to stay in business. We don't want to be railroaded.

Also, they gave us an option on buying insurance—quarantine insurance. So, what my coworker did, she called our Rural Community Insurance Agency and talked about the quarantine insurance, and unfortunately, the insurance that I have was quoted in 2007. At 50 percent at CAT—the level is 50 percent. It's avocado, it's irrigated, the acres is 270 acres.

The price per acre is \$1,832, and the base premium is \$43,939. If we went up to 60 percent at 270 acres, the base premium for that is \$147,273, and that is just buying the buyout program—the buy-up program. The buy-up program is basically one step to getting to the quarantine insurance, and you can't qualify if you're not detected with that fly, and if you're not detected with the fly, you're out—you're sorry, sucker.

For my insurance, just for crop insurance itself, is \$300 a year. In case a natural disaster happens, like a fire or flooding or other things that happen, we have to go through that, and the U.S. government gives us the base premium of \$39,000—wait; yeah, this is from the United States government—of \$39,474, and that's what they're going to reimburse you if you had damages to just fire or threat damage; you know, like major catastrophe, but nothing like on this magnitude where we're getting quarantined.

It's just I feel that this is really hard for us to figure out: where we go or how can we afford this when we've got water issues. We have to supply for fertilizer and feed and just all of that. It's just a catastrophe for us.

My growth manager has been in the organic business for 34 years, and he says that if we continue on this path, I'm going to be out of business in less than three or four years. And he just feels for them, and he's even spoken to growers that are shaking their head and wondering what happened: "Why are they coming down so hard on us?"

**SENATOR FLOREZ:** Thank you.

[Microphone malfunction]

**PROFESSOR CAREY:** . . . has issues dealing with the medfly. My testimony is framed around this pest. However, I believe that virtually all the concerns I raised on the medfly can also be raised on other pests, including LBAM.

I would venture to say that the farmer—we just heard Erin Morin—is the only person in this room who faces not just economic hardship from the medfly and LBAM—she didn't mention, by the way, that she might be subject to LBAM

quarantine as well—but the real possibility of economic devastation; that is, losing her entire farm and thus her means of livelihood.

Last week, when I heard that she was going to testify at this hearing, I got contact information since I was interested in what she would say about the medfly. And talking to her on the phone, I learned that she was flying here on her own money, that no one was meeting her at the airport, and she was going to stay with somebody she met on Facebook. She stayed last night with my wife and myself, and I learned the magnitude of this devastation she and her family faces.

What she laid out was really beyond belief. It's like a bolt out of the blue. Two medflies are captured near her avocado farm and her life is turned upside down. There's no economic options, no legal appeals. This is absolute tragedy for the farmers, and there appears to be no one who is concerned with their plight. Indeed, there appears to be either disconnect between the claim by CDFA on the impact of the growers and the reality to the problems on farmers.

Just this morning, when I was preparing for this testimony, I went to the Web and the CDFA has posted the Medfly Interior Quarantine. They state, "No business has gone out of business due to medfly quarantine." That's not a very high bar, but I would like to know what the data is for that. And also, it'd be interesting to know how many people like Erin had to take out new loans due to economic hardship and so forth.

Other statements: "Many businesses have benefited from sales of safeguarded material." Regarding vendors: "These businesses may experience a reduction in sales and reduced shelf life, but neither of these reductions would represent a significant economic impact." I have to believe that there's a real disconnect here and that the farmers and vendors and so forth are really suffering.

So, I would say, at the very least from this hearing, that CDFA and USDA would be encouraged to talk to the farmers and get this directly.

Now, regarding the exotic pests more generally, I have a problem with many of the policies and programs for the invasive pests because I believe that

they're as outdated as they are scientific. You can even take, for example, the trigger, the two-medfly trigger, that caused Erin's farm to be quarantined. I served on the medfly panel from '87 to '94, and I know that there's no scientific basis for these. It's just sort of a consensus. You've got to have these policies. That would be an example. Another would be the acreage under quarantine and so forth. This is just an assertion, it's just a sort of consensus among panelists, but there's not a scientific basis for this. That would be just one example.

Now, with respect to the medfly situation—but I also think is a generic to many other pests—I believe that the medfly is permanently established in the state. There's probably many other fruit flies as well. There's five cities just where Erin is in San Diego County: Escondido, Fallbrook, Oceanside, Spring Valley, and Imperial Beach. They've caught medflies over a series of years there. One out of three cities in the state—that is 167 different cities—have had medfly appearances. There's 47 of these cities with multiple appearances. In fact, one with eleven different years in which they caught the medfly; two cities in five to six different years. The medfly was discovered just down the road here in Dixon in '07, raising the disturbing possibility that it spread to the agricultural regions of the state. There's been 60 emergency medfly projects, and thus, 60 eradication declarations; that is, successful declarations, including 17 in the last ten years. There's 300 square miles under quarantine, including Erin's farm.

Now, what I'd like to do is ask that CDFA and USDA answer in writing through you, Senator Florez, a series of questions. I won't go through all those, but if the claim is that these medflies are being reintroduced into the state—but in fact, this does not resonate when you answer these questions—why, for example, did the medfly never appear in the state before 1975? And since then, it has appeared in two out of three years and more recently, virtually every year.

Another example: Why are there no medfly outbreaks in other high-risk medfly-friendly states, such as Texas, Arizona and New Mexico? They too have international airports, vacationers from Hawaii, and migrant workers.

There's a series of questions like this. It simply does not make sense that you'd only find these in California. This is: 100 percent of all medfly outbreaks are in California. This is worldwide, not just in the country.

Now, I believe what to be done more generally about the exotic pests, I believe that we need a complete overhaul of the exotic pest paradigm. It simply cannot be changed by fine-tuning or tweaking. I believe we need something like a congressional hearing, including the secretary of Agriculture. I also believe that we need involvement of the National Academy of Sciences. You bring the best possible science to bear on this and the most elite scientists become involved. For example, when we talk about paradigm shift, I think every sort of domain within this area needs to be revisited. From the farmer, I believe they need to be in control of their own destiny. You can have a consortium of farmers. It needs to be more in their hands than just in the state's hands tapping into these emergency funds.

The quarantine, we've got to work with farmers so that the local concerns are taken into consideration in concert with the more global concerns. Right now, Erin is just "thrown under the bus," she was saying last night. Intervention—there's new tools. Where's the molecular biology here? There's just spectacular science available, and this is not being brought to bear on these exotic pests. Monitoring—you should be able to, what they call, "barcode a fly" within 24 or 48 hours and know where that fly came from. Not just in Hawaii but, in fact, where in Hawaii or Guatemala and so forth. Exclusion, trade, all these things need revisit.

I'll end here with a projection. I did a really rough regression here, and the trend here in terms of emergency projects is about one new emergency project every two years, but there's huge variation: a variation from 5 to 17 over the past 15 years or so. So, in 10 years that means we'd have 16, on average, emergency projects on exotic pests, with an upper limit of maybe 22.

In 20 years, we have 21, upper limit of 30; 30 years, we have up to 35 or so. In other words, it's conceivable at some point in the not too distant future we may have 5 or 10 or even 20 percent of all farms in the state under some sort of quarantine, just like with Erin's farm.

Clearly, we cannot move forward with "business as usual" with exotic pests. It's not just a matter of doing this a little better. We've got to change the whole framework of how we approach this.

Thank you for inviting me.

**SENATOR FLOREZ:** Let's go on to the next panel. Thank you very much.

Okay, Panel 2, we have Paul Gutierrez, Chris Mittelstaedt, and Mark McAfee.

Thank you. Thanks for joining us. Any order.

**MR. CHRIS MITTELSTAEDT:** Chairman Florez, Vice Chair Maldonado, and esteemed members of the Senate Committee on Food and Agriculture—thank you for taking the time to hear testimony today about the light brown apple moth and the implications of the quarantine program.

My name is Chris Mittelstaedt, and I am the founder and CEO of The FruitGuys. I founded The FruitGuys in 1998 as a way to deliver fresh fruit to offices to replace junk food and help employees eat healthy while at work. We're a privately held family business that remains active not only in the business community but also through service work that includes donations of food to those in need, farm stewardship projects around sustainability, volunteering for organizations such as the California Taskforce on Youth and Workplace Wellness, and Shape Up San Francisco. As a Bay Area based business, we're advocates for locally grown produce and have followed that philosophy throughout our expansion by opening up local operations in places such as Philadelphia and Chicago so that we can buy from farmers in the region by season.

Because we buy directly from many small and organic farmers in California, I've been given a view into the impacts of the light brown apple moth quarantine that I would like to share with you today.

I draw two main conclusions from observing and talking with the small farmers that we work with. The first, as you will hear, is that it is truly the quarantine and not the moth that is most damaging to small California farmers. The second, as I will explain, is that the light brown apple moth quarantine is inadvertently creating international trade policy that benefits international farmers importing product from countries that do not quarantine for the light brown apple moth over our own local California growers who are having to exist under the terms of this quarantine.

Blue Moon Organics, a small organic farm in Aptos, California, is a provider to The FruitGuys of fresh organic strawberries. Greg Rollings and his wife Amy are the owners, and we have worked with them for a number of years. Greg is one of the farmers we work with who has been quarantined. Greg sells nearly all he grows locally within 150 miles of Aptos. His first quarantine for light brown apple moth came in late June and early July of 2009. State officials found 20 suspected light brown apple moth larva on 3½ acres of his 7-acre strawberry patch. At the time, they told Greg that they would get back to him within 7 to 10 days. His product, and that 3½ acres of land, was under quarantine for 3½ weeks before officials got back to him with an answer that it was not the light brown apple moth but a native leaf roller in his fields.

Strawberries are, of course, fragile and need to go to market immediately, especially organically grown ones. Thus, during the first quarantine period, Greg not only lost his crop but also had to pay pickers to remove the berries, as they came in during this time, so that they would not fester and ruin his future crops. The payment to workers plus the loss revenue was significant. However, this was not the end of his story.

As the first quarantine ended, inspectors again came out and now inspected the other 3½ acres of his strawberry patch. This was toward the end of July in 2009. In this section, they found 110 larva and again quarantined

Greg and said that they would get back to him within 7 to 10 days. Greg asked them why they would assume that these larva were any different from the others found just a few rows over, and thus, why they would quarantine him when they had just proven that he had had a native non-LBAM leaf roller on his property. Greg did not get a sufficient answer. Twenty-five days later, now into August and now past Greg's June and July prime strawberry growing season, CDFA reported to Greg that again, all 110 larva were in fact native leaf rollers and thus negative for LBAM.

When Greg, exasperated, asked how he could avoid quarantine in the future, the answer he was given was that he needed to eradicate all caterpillars on his strawberries to be assured that he would not be quarantined. He was told: Otherwise, if they find anything, they will suspect LBAM and immediately quarantine. Greg asked: Since they had found native leaf rollers previously, would this count to any documentation of not having found LBAM and thus alleviate quarantine threat? Again, they said "no."

As a sustainable and organic farmer, the kind we like to work with, Greg finds value in caterpillars, as they provide food for spiders which are a benefit to Greg and his growing practices.

In total, in the summer of 2009, Greg lost nearly \$40,000 in revenue and had to pay his workers to pick a crop that was thrown away. He is still trying to recover from a year that includes this unexpected economic damage suffered from a quarantine that wasted his time and money as well as the taxpayers' dollars for a moth that, according to Greg and other farmers we work with, as well as scientists both here and abroad, this is not a threat to a farmer's crop whatsoever.

Greg's story is not unique, but it is a good example of how we are hurting our local growers.

I would now like to address how this policy not just hurts these local farmers but also potentially benefits foreign farmers and creates a damaging and unfair trade imbalance. As an example, I would like you to think about two apple orchards exactly the same. Both of them with light brown apple

moth in them, in equal amounts. One farmer was given a pass from the light brown apple moth quarantine and allowed to sell apples to the grocery store. The other was restricted from sale due to the quarantine. This would seem like a clear case of a policy applied arbitrarily and subjectively that benefited one farmer over another without any legal basis for doing so.

What could possibly be the difference between these two farms? In this case, an example that I'm giving you, one is in New Zealand and the other is in California. This is exactly what is happening in our relationship with New Zealand farmers who are importing fruit into California. In New Zealand, light brown apple moth is prevalent and farmers are not quarantined. Product can come into this country and state and be sold in our grocery stores. However, our domestic growers, our local growers, our organic growers, who have the most dedication and appreciation for keeping California land healthy and productive, are being restricted from selling their product and earning a living by those entities that are supposed to look after their interests of California farmers.

I would imagine, as a goal, CDFA would at least want to make sure that there is a level playing field for all, which currently, as a result of this policy in regards to domestic and international trade status, there is not.

I know that this is a complex and contentious issue, and I appreciate your openness to hearing my arguments against the quarantine and why it is bad from a business perspective for California and for our farmers.

Thank you for your time.

**SENATOR FLOREZ:** Thank you very much.

**DR. ANDREW PAUL GUTIERREZ:** Thank you very much for the invitation to speak this afternoon. My name is Andrew Paul Gutierrez. I'm a professor at UC Berkeley. I'm now emeritus, and my area of expertise is what I call agroecosystems analysis. It's applying engineering sorts of approaches to the analysis of pests and plants with problems. I was the founder of the University of California IPM program back in 1976.

I'd been working on LBAM when I realized that they were trying to spend \$100 million to eradicate it, so I started doing an analysis of it. The analysis puts together the biology of the species, drives it with weather. You imbed the model into a GIS program, and then you can map the potential distribution and abundance of that species. And the results that came out were absolutely astonishing. It said that this species would be limited primarily to the coast. That there would be some intrusion into the shadow of the winds coming in from San Francisco Bay and toward Sacramento Valley. And when you look on the ground, light brown apple moth is a very difficult species to find. It's not very common. And if it is such an important pest, why is it so difficult to find?

Well, I tried giving this information to California Department of Food and Agriculture. Sent a letter to Secretary Kawamura, addressed a conference in Foster City on LBAM, and by and large, the information was ignored. What CDFA's approach has been is to accept a USDA analysis which posits that most of California would be infested by light brown apple moth and the southern half of the United States. To be polite, this analysis is, at best, bogus. It is not very good at all.

CDFA claims that the hallmark of their eradication success is pink bollworm. When you do exactly the same analysis for pink bollworm, it says that mostly, pink bollworm couldn't exist in the Central Valley of California. So, what are they eradicating? They have eliminated a pest—supposedly—because they can't find it. But if you think about it, what's happened is that the introduction of Bt cotton, which is highly effective against pink bollworm in the desert valleys, reduces the populations to very low numbers. So, these anticyclonic winds that would normally bring the pest over the Tehachapis during late summer bring very, very few to nondetectable levels.

I've done a similar analysis on medfly, and the predictions for medfly are basically that it's Southern California, San Diego, Orange County, Los Angeles Basin, and a bit of Santa Barbara. On an annual basis you might get patches of favorability elsewhere, but for something to be established, it must have continuous lifecycles. Done the same thing for glassy-winged sharpshooter

and Pierce's disease, and I'm now doing the grape berry moth, which has been reported from Napa County.

All of this work was done without any funding from within the state of California. It comes mostly by working with European colleagues. Why? Because it's difficult to get funding from CDFA unless you're doing things that would tend to enhance how the bureaucracy is operating. CDFA has basically refused to listen to science, or at least have a discussion or argument about the soundness of the science, and that does not bode well for the future, as Jim Carey said. We're going to have an abundance of new invasive species coming in.

So, my recommendation would be the following: The biology of species are not idiosyncratic. If you understand the biology and you can describe it in a simulation model, or a mathematical model, and you can drive it with weather, then you can start predicting the kind of performance that it's going to be having in a particular area, and you can start mapping of where it can be most destructive. In the state of California, this does not exist. This was the original goal of UCIPM: to develop systems models for all the major crops in California. It failed because as soon as the monies became permanent, it became a mini-grants program, and we never got there.

So, my recommendation would be is that we start getting back to science and not the politics and not the bureaucracy that drives a funding request, say, within the state of California.

Thank you.

**SENATOR FLOREZ:** Thank you very much.

Mr. McAfee.

**MR. MARK McAFEE:** Honorable Chairman and members of the board—thank you for having me here today and putting me on the board. I don't want to spend a lot of time saying the same things that were said in the last few minutes between James Carey and Erin and Paul—Dr. Paul Gutierrez—as well as Chris, as I would say exactly the same thing vehemently and repeatedly. I'm in total support of what they've said here in commentary.

I want to bring up something that probably won't be spoken about today, and that is the general culture of the farmer in the complex. You don't see a lot of farmers here today, and I would say that's the big reason I was asked to come speak is because their voices aren't being heard. There is a culture of fear, and these farmers are petrified to show their faces and their voices in front of a forum which will be critical of them or measuring what they say.

I participate at Organic Pastures Dairy—I'm the founder of Organic Pastures Dairy in Fresno—selling our organic products. I have almonds and various different things, raw dairy products, so on and so forth, throughout farmers markets in California, and we repeatedly hear from other farmers—pear growers, apple growers, strawberry growers—that these kinds of actions are done as—they're not included in the process, and they're fearful to speak up in opposition to the processor and contribution to perhaps a better remedy in the process.

And I would just repeat that I completely support what's been said before. However, I want to put an additional tangent to this discussion; that is, the fear factor of the farmers—not be encouraged to be a full partner in the discussions because they're just scared to death. The organic farmers are very fearful because of their certifications and their inability to go to a farmers market, whether they be under quarantine or the required pesticides or inhibition or suppression measures that they're being asked to do.

So, I would just add, the other tangent to this is the fear from the farmer, being scared to participate in the process.

Thank you very much for your time.

**SENATOR FLOREZ:** Thank all of you. Just for this panel, you've used some words that I've kind of written down: fear and the politics, the issue of whether or not the studies are actually valid. Is the bottom line, from all of your perspective, that this is something that we're never going to eradicate anyway? I'd like to hear just your opinion.

Doctor, if you could pull the microphone, please.

**DR. GUTIERREZ:** I don't think so, and I think Jim Carey is on record as having said the same thing. It's probably been here for quite some time. Populations are low. They're being controlled mostly by natural enemies. So, they're just going to become part of the background. They feed on all kinds of things.

**SENATOR FLOREZ:** Okay.

Yes.

**MR. MITTELSTAEDT:** I'd also add, too, that the farmers that we work with, I think—again, talking about the culture of farmers—that they would like to handle these things to some degree on their own and make decisions, especially the organic ones, about their organic farms autonomously about how they're going to handle their pest programs. The ones we talk about when we brought up—we did a survey of 20 farmers in northern California we worked with to get this data about who's been affected by the apple moth, and they laughed when we said the "apple moth" because they said, *Gosh, that's so far down on the totem pole of things that we worry about that that's just not something that is even considered dangerous to our farm.*

**MR. McAFEE:** If I could just add one more thing. The world's an immune system and it lives and breaths, and as we create opportunities and voids where we get rid of the biodiversity, we start inviting things to occupy our space that could be a problem, could be a pathogen for us. That goes for anything: inside of a creamery environment, a pasture, your guts—you know, in environments where we're worried about invasive exotic species. We have an immune system microscopically, the whole entire world. We have them also in our backyard; in our children's guts. We are one huge immune system. We have to work with Mother Nature or else we're going to be tangling with her forever. So, it's very important to work with her.

**DR. GUTIERREZ:** The other thing is that you have to look at these species almost one by one. They have different potential. For example, the recently discovered European grape berry moth. When you look at the perimeters of that one, that one gives cause for concern, and that's something

that monies could be better addressed in terms of how to deal with that, and yet, I don't think that anybody, to my knowledge, is approaching that one yet.

**SENATOR FLOREZ:** And this opinion on the trade policy you mentioned earlier in terms of Canada, Mexico, other countries, Europe, what could you tell me?

**MR. MITTELSTAEDT:** I'm sorry, I'm not . . .

**SENATOR FLOREZ:** What can you tell me about those other countries and their dealings with LBAM?

**MR. MITTELSTAEDT:** You know, I'm not quite sure. I've really looked at the New Zealand issue because New Zealand, I think, is so akin to California in terms of having the light brown apple moth, having it established for a long period of time. And again, the concern we have there, that I don't think really has been addressed, at least sort of publicly in the media and just out in discussion, is that there is this sort of accidental consequence of this policy that is creating an international trade issue that needs to be discussed and talked about. And I think it's a very important one because when, I think, domestic California farmers realize it and understand that, it's going to cause challenges.

**SENATOR FLOREZ:** Okay. I want to thank the panel, and Mr. McAfee, you mentioned the cycle within the body. Can you just go a little further than that?

**MR. McAFEE:** It's one of my favorite subjects.

**SENATOR FLOREZ:** I know it is, so maybe we can get it on the record.

**MR. McAFEE:** Well, Dean, I appreciate the invitation to discuss this briefly.

Probably the most dangerous thing we can do in America, as a living, breathing organism, is to walk around with a weakened immune system. We've created challenges in our CAFO dairy systems, in pigs, and chickens. If you've seen Food, Inc., you know that we're creating superbugs with antibiotic abuse, and now they're killing tens of thousands of Americans every year because of the fact we've got superbugs—the MRSA's and the VRAs and all the

other \_\_\_\_\_ and everything. When you have a depressed immune system in the human organism, that's a welcome mat for this superbug to come get you.

So, we have to be thinking about how we manage our ecosystems externally in terms of not creating superbugs and monocultures, but rather, polycultures and diversity that is strong; and yet, at the same time, building our inner ecosystems in our bodies so that we are not subject to them or any other pathogen out there as a welcome mat.

That's why we always talk about raw milk, because of the biodiversity, but it's also other whole foods that are unprocessed and whole that help us keep that strong inner immune system. That's why you see this whole food movement going on and people saying "prevention, prevention," "immune system, immune system," because it's not talked about.

But that's just a little pitch that I thought I'd throw in. Thank you for asking.

**SENATOR FLOREZ:** Well, I just wanted to make sure, and if we wanted to get more information on this, we can go to your booth out on the CDFA Ag Day.

**MR. McAFEE:** Unfortunately, we're not there today. We were not allowed to present our booth. Hopefully, maybe next year we will. But I've been politically correct in shaking everybody's hands today, and hopefully, we'll be invited. But I think it's important to have everybody at the table because some of the best markets we have are the niche markets, and they need to be addressed as well.

Thank you very much for your time.

**SENATOR FLOREZ:** Thank you, Mr. McAfee. We appreciate it. Thank you for putting that latter part on the record as well.

**MR. McAFEE:** I appreciate it. Thank you.

**SENATOR FLOREZ:** Let's go ahead and have Panel 3. The deputy director for the U.S. Department of Agriculture. And I will state as you're

coming up that you have not been cleared to provide testimony to the committee, but we appreciate your ability to answer some questions.

**MR. MICHAEL GUIDICIPIETRO:** I'll certainly give it a try, Chairman.

**SENATOR FLOREZ:** Just maybe some broader, general, big picture questions. I think I asked the last panel earlier about U.S., Canada, Mexico. They have LBAM populations in those countries?

**MR. GUIDICIPIETRO:** Mexico and Canada do not. New Zealand and Australia—it's believed to originate in Australia, but both Australia and New Zealand do have established populations of light brown apple moth.

**SENATOR FLOREZ:** They do. Have they reached any different scientific conclusions than we have through our particular EIR?

**MR. GUIDICIPIETRO:** To be honest with you, I have not read the EIR, so I can't really say one way or the other on that, but I could speak to the trade component, that whole . . .

**SENATOR FLOREZ:** Please.

**MR. GUIDICIPIETRO:** The gentleman previously mentioned a legitimate point. I think, though, it's important to remember that in the specific case that was mentioned—and that was the apples from New Zealand—in the case of the U.S., there is a mandatory IPM program specific to light brown apple moth that's required and a very, very intensive inspection regime.

The other part of this component, Chairman, that I think is important to keep in mind is that the international arena is becoming smaller and smaller, and by that, what I mean is, we export a lot of produce to Mexico and Canada—two biggest trading partners for California. For New Zealand to ship to those countries, the LBAM host either have to be treated or come from free areas. I can see a situation where, under different circumstances in California, I could see those two trading partners, in particular, requiring the same import conditions. Under discrimination within the IPPC, they have to create equivalent import conditions. So, I could see that as a potential side effect.

**SENATOR FLOREZ:** And if we were to declassify our particular LBAM issue from a Class A threat to something minor—a nonactionable pest—would that cause other countries to follow suit, in your opinion?

**MR. GUIDICIPIETRO:** I've heard that. I guess my feeling is this: the trade arena internationally has become a lot more sophisticated, and I think that, by and large, through training—sometimes by the U.S. themselves, other developed countries like Japan and Australia—the plant protection authorities of most of our trading partners become pretty sophisticated. And I think that, by and large, anybody that thinks that if the U.S. was to deregulate, that necessarily some of the other trading partners would sort of fall in line, I don't see that. I see examples historically, that have just happened recently, that indicate that that would not be the case.

**SENATOR FLOREZ:** And in terms of the international trade issues that have been mentioned by some of our farmers in the last panel, are there state-to-state distinctions in the way that we do things—Florida-California—when it comes to LBAM?

**MR. GUIDICIPIETRO:** I'm not sure I understand the question.

**SENATOR FLOREZ:** Well, I mean, we have a state-control issue through CDFA here on LBAM. Is there any difference in what we do in other states, let's say Florida, for example?

**MR. GUIDICIPIETRO:** I want to make sure I understand the question. Is Florida—what would happen, if we deregulated, what would happen in the case of interstate movement?

**SENATOR FLOREZ:** Right.

**MR. GUIDICIPIETRO:** Well, two things could happen. The states could petition us, the U.S. government, to impose restrictions. If none of that happened, then I could see a scenario where trading partners would consider not only California generally infested but probably the United States generally infested; and so, they would impose requirements likely for light brown apple moth hosts from those states.

**SENATOR FLOREZ:** And when we negotiate, is LBAM one of those items we negotiate about, or is it something that's a hard, fast issue with other countries? Is it something to negotiate with, or is it just one of those things that's off the table?

**MR. GUIDICIPIETRO:** No. In fact, we spent quite a bit of time on, I would say, rather substantive negotiations, particularly with Canada and Mexico, a little bit with Chile, and some of the other trading partners. It's roughly about 11 that have it listed as a quarantine pest. Some of them fairly major. But certainly, Canada and Mexico rise to the top, and we've had, I would say, rather substantive negotiations in trying to—the knee-jerk reactions sometimes by trading partners is just prohibit, but we were able to at least keep product moving under specified conditions.

**SENATOR FLOREZ:** Thanks. All the questions I have. Thank you.

**MR. GUIDICIPIETRO:** You're welcome.

**SENATOR FLOREZ:** Thanks for your time.

Let's have Panel 4 from CDFA: John Hewitt and Dr. Robert Leavitt. Thank you both for joining us. I don't know if you have statements. I have some questions. I don't know how you want to start. I guess, you know, what I'm really more interested in, as I said at the beginning of the hearing, is maybe just getting a quick outline on the history of the EIR would be good to get on the record, and kind of what triggered the EIR, and was it necessary, did it add value, and ultimately, who wrote it, and those types of big-picture questions.

**MR. JOHN HEWITT:** Certainly, Senator, and good afternoon. John Hewitt, general counsel with the Department of Food and Agriculture, and accompanying me is Dr. Robert Leavitt, acting director of Planned Health and Pest Prevention Division.

I'd like to thank the Senator, the committee, and also the other guests for their continued interest in invasive species. Quite a bit of information. I know you have quite a bit of questions, so I'll jump right to the timeliest information for the committee.

After nearly two years of work, CDFA certified its light brown apple moth Programmatic Environmental Impact Report. It brought purposes and objectives of the Environmental Impact Report, our protecting California agriculture and the environment from damage by the light brown apple moth, and the use of tools to accomplish this in an environmentally safe and responsible manner. I'd also like to highlight a couple of minor program revisions and clarifications that are contained in the Programmatic Environmental Impact Report.

In summary, the light brown apple moth program will focus its resources on control and suppression where possible, and it will eradicate small outlying, indiscreet infestations. Initially, this will occur through the deployment of twist ties and supplemented or superseded in the near future by the sterile insect technology as soon as it is practical. And CDFA will not be making any aerial releases of insect pheromone as a management strategy for the light brown apple moth program.

**SENATOR FLOREZ:** Is the latter item, is that spraying?

**MR. HEWITT:** The eradication tool for . . .

**SENATOR FLOREZ:** You just mentioned.

**MR. HEWITT:** Correct. I think that's more commonly referred to as the aerial spraying. Aerial application of pheromones has been removed as a management tool for the light brown apple moth program. That is correct, Senator.

**SENATOR FLOREZ:** Okay. And is that a firm, solid, not-to-go-back-to policy?

**MR. HEWITT:** Correct, that is firm, solid. It is discussed in the findings that are accompanying the Environmental Impact Report. Correct, Senator.

**SENATOR FLOREZ:** And is that to say that maybe we were too quick on the draw to start that process? The Governor moving through, I believe, executive order to do that? If it wasn't good now, was it good then? I'm trying to get an understanding how we make these decisions.

**MR. HEWITT:** Certainly, Senator. I'm having a little bit of difficulty following you. I apologize.

**SENATOR FLOREZ:** Well, the EIR probably tells you we're not going to do any spraying, correct?

**MR. HEWITT:** Actually, the Environmental Impact Report evaluated the aerial application of pheromones as a management tool, as well as a number of other management tools. It was concluded through that process that it is not going to be the most efficacious tool for the current strategies that we wish to deploy.

**SENATOR FLOREZ:** But we did deploy it at the beginning of this process. Is that correct?

**MR. HEWITT:** Correct. The Department of Food and Agriculture did utilize aerial application of pheromones in a couple of instances back in 2007. However, if I could clarify Senator, the goals of the program were substantially different at that time, as well as our legislative mandate was different as well.

**SENATOR FLOREZ:** What were the goals of the program then as opposed to now?

**MR. HEWITT:** The goal of the program at that point.

**SENATOR FLOREZ:** Yeah.

**MR. HEWITT:** In 2007, as Food and Ag Code Section 6050.1—excuse me, recently repealed Food and Ag Code Section 6050.1 required us to eradicate the light brown apple moth. However, as is discussed in the Environmental Impact Report, there have been a number of changes, including the development of sterile insect technology as well as an exponential increase of the apple moth population, which have contributed to the decision not to use it as a management tool.

**SENATOR FLOREZ:** Got it. Is there a change not only in that section, as you've mentioned, but in philosophy at the Department? Are you now saying that we are not going to eradicate under the EIR? Is this still full eradication, or is this some sort of management tool?

**MR. HEWITT:** If I'm not clearly responsive, just jump right in, but I think I understand what you're getting at. The goals and objectives of the program now are to control and suppress the light brown apple moth program, and in those outlying areas would be to eradicate those small and discreet populations of the apple moth.

**SENATOR FLOREZ:** Okay. And what percentage of the small and discreet populations are we trying to eradicate, and which percentage are we leaving alone or just managing? If we had a pie and the outer areas are little pieces we're trying to eradicate, what percentage of the program is kind of geared towards that?

**MR. HEWITT:** I'm personally not sure about the percentages and numbers, but I'll defer to Dr. Leavitt.

**SENATOR FLOREZ:** Sure, we can back-forth.

**MR. HEWITT:** Dr. Leavitt can talk a little bit about successes of eradication in those outlying areas; where we've successfully taken those discreet populations and already eradicated them. And then also the plans going forward . . .

**SENATOR FLOREZ:** Let's do that, but I'll bounce back between you both. But big picture question: Have we ever eradicated any pest in California? I mean absolutely 100 percent.

**DR. ROBERT LEAVITT:** If I may, Senator. The first question about the percentages, most of the light brown apple moth are in what we call a "generally infested area." That would be in, roughly, Marin down to Santa Cruz, including the western sides of Alameda County and Contra Costa County. In that area, we are adapting a contain and suppress strategy.

**SENATOR FLOREZ:** Okay.

**DR. LEAVITT:** We are planning on doing local eradication in the small, localized outlier populations, and right now those would include areas in which we have one or two moths more than five miles away from the generally infested area. In particular, we're looking at Davis, Tracy, Manteca, Los Osos, Arroyo Grande, a few places like that, and I believe we're doing delimitation

right now in San Diego, and we're waiting, also, results from Stockton and Woodland. So, they're very small outlying—the goal of that is to keep agricultural produce and products from the Central Valley moving to foreign and domestic markets. And we have eradicated previous small outlier infestations with the pheromone twist ties—and in one case with Bt—in Napa and at Treasure Island, Sherman Oaks, San Jose. I think there was a couple other locations. So, we do know that pheromone twist tie technology works.

**SENATOR FLOREZ:** So, what is the difference in the program 2007 to now, as you've given that area, given what you call the outlier areas where we have eradication, given the Marin, Santa Cruz area, what we now call contain and suppress? What's the difference in this policy as opposed to what it has been in the past years?

**MR. HEWITT:** Are you specifically asking about the difference between an eradication program and a contained control?

**SENATOR FLOREZ:** I just want to know—you did an EIR—what did you learn from the EIR that's changed your approach and your opinion of this particular problem, this light brown apple moth issue? What's changed since the EIR that, you know, you didn't do or apply in years past?

**MR. HEWITT:** Well, I'll speak broadly and then defer to Dr. Leavitt, but the difference between eradication and control and suppression program isn't necessarily in the tools that are used but in the frequency and the density in which they're used. That's the general difference between the control and an eradication program.

Dr. Leavitt?

**DR. LEAVITT:** Thank you, John. Yes, Senator—again, I want to stress that the goal of the light brown apple moth program is to keep California agriculture or produce moving into foreign and domestic markets, and that's always been the overarching goal from the beginning.

Now, I also want to clarify that in the Environmental Impact Report, several alternatives were evaluated as being available to the program. I'd like to stress that all of those alternatives were found to be adequately

environmentally safe; that is, the five alternatives that were in the final draft. And I'd also like to stress that the aerial release alternative in the EIR was different than what was actually done in 2007. That said, yes, the program has changed direction, and that's based upon the survey and trapping data. On March 15th, the USDA made an announcement that based upon the extent of the infestation of light brown apple moth here in California, that in their judgment, eradication was no longer feasible. And the CDFA, of course, has the same data, and we concur with that conclusion.

**SENATOR FLOREZ:** Was that conclusion different than what you started with in 2007?

**DR. LEAVITT:** In 2007, the USDA convened a technical working group of world-class experts on the light brown apple moth, and given the trapping and infestation data at that time, the USDA and the CDFA believed that the infestation could be eradicated.

**SENATOR FLOREZ:** And what is the opinion now of CDFA? Has the population increased since that time, or has it actually gotten smaller? Have we eradicated control? What's the big picture in terms of the population?

**MR. HEWITT:** The big picture, Senator, is that the population of the light brown apple moth has increased in the generally infested areas exponentially. The numbers are contained in the Environmental Impact Report. But from the nonscientist perspective, I can tell you that in those heavily infested urban areas, the densities are growing rapidly.

**SENATOR FLOREZ:** And how do these populations move?

**DR. LEAVITT:** Senator, the populations can move two ways essentially. One is through natural spread, and we believe that to be actually quite slow. The main way that the populations of any invasive species would spread, including the light brown apple moth, is through artificial human assisted movement, and particularly on, you know, nursery stock, plants given to your grandmother—some way being carried from one location to another by people.

**SENATOR FLOREZ:** So, they're being moved by people like us, then.

**DR. LEAVITT:** Well, I mean, everybody doesn't go to the store or look in their backyard for invasive pests necessarily when they give a plant to their daughter or something, so it does move inadvertently, yes.

**SENATOR FLOREZ:** Do these predators have any natural—does the LBAM, the moth, have any natural predators? Would we have enough of these natural predators to actually inhibit the spread versus something that we're not . . .

**DR. LEAVITT:** Yes, Senator. The CDFA actually started a program to track natural enemies, natural predators, from the very beginning, back in 2007, and we know that they are at least some way effective in other countries—New Zealand and Australia. What our researchers say so far is that the number of natural predators here in California are few and that the effect so far is minimal. But we do track that because it would be an important part of decreasing the population.

**SENATOR FLOREZ:** And just so I'm clear on what the Department's position is at this point—we've been bantering it a little bit, eradication versus control, and you've given me some examples of Santa Maria—excuse me, Santa Cruz and Marin as a control and suppress area and some of the smaller outlier areas as being eradication. So, what's the goal? Is it both? Is it one? Is it the overall picture, control and suppress? What would you term. . .?

**MR. HEWITT:** As Dr. Leavitt mentioned earlier, the overarching goal is to allow agricultural products to continue to be able to move domestically as well as internationally, and to protect the existing environment of the light brown apple moth. I think somebody mentioned earlier, it could feed on potentially more than 2,000 plants in California. Specifically to achieve that goal, as I mentioned in my opening comments, the Department will focus its resources on control and suppression where possible, and in those small and in those erratic outlying areas, the goal would be to eradicate and keep the pests from moving.

**SENATOR FLOREZ:** And I guess keep bantering this, but you had a process that said eradicate, at one point, by 2015. Is that no longer the goal?

**MR. HEWITT:** That is correct. The findings that accompany the EIR certification made a moderate revision to that, and that is focusing from eradication to control and suppression.

**SENATOR FLOREZ:** I've been trying to get you to say that sentence for the last ten minutes. So, we're clear: we've gone from an eradication program to a control and suppress program, with goals no longer set at 2015 of total eradication. Correct?

**MR. HEWITT:** That is correct. As I mentioned before, primary reasons for that was the exponential increase in the apple moth population as well as the sunseting of Food and Ag Code Section 6050.1, Senator.

**SENATOR FLOREZ:** Right. No, I get it. It just brings to mind for future reference, I guess to CDFA, from our vantage point—from my vantage point, I should say; the rest of the committee isn't here—that we, in late 2007, just began to utilize an aerial treatment that was hell bent on eradication, and it took us an EIR to recognize that control and suppression of a population that's natural in its habitat, that is always going to be with us and has always been with us, was probably not the best course of action. That's what the EIR tells me.

**MR. HEWITT:** Senator, I think—you know, my reading of the EIR would indicate that over the course of two-plus years of preparing that Environmental Impact Report, the one thing we couldn't do was freeze the population numbers at their current levels. So, it was a bit of a moving target, I guess you could say, in that instance. As we continue . . .

**SENATOR FLOREZ:** But you just told me earlier that the population has gotten bigger, right?

**MR. HEWITT:** Absolutely.

**SENATOR FLOREZ:** So, the 2007 spraying was kind of a worthless endeavor then, right?

**MR. HEWITT:** Well, I disagree, Senator. We were looking to fulfill our statutory obligation, which was to eradicate the light brown apple moth at that time, based on the population numbers of 2007.

**SENATOR FLOREZ:** No, no, I get it. It just seems to me that it was—and the Governor took that action via executive order, is that correct? So, when you say to meet the statutes or to meet the charge was to eradicate them, I thought the Governor went so far as to utilize an executive order in order to call this an emergency so that his emergency powers would allow for swift action on this—or was that not the way it proceeded?

**MR. HEWITT:** To be honest with you, Senator, I wasn't with the Department at that time in 2007, but my understanding of the Governor's emergency powers—and I don't want to purport to be an expert by any means on this—is that that would've been the tool to achieve eradication; that actually, Food and Ag Code Section 6050.1 specifically laid out eradication as the Department's direction for the program at that time.

**SENATOR FLOREZ:** So, the EIR, from your perspective then, has changed the policy absolutely on its head in terms of your program today for LBAM, as opposed to where we started in 2007?

**DR. LEAVITT:** Senator, I would respectfully disagree that the EIR itself changed the program. The EIR just provided alternatives to the program, which were evaluated and all were accepted in the EIR. There was originally six; we went to five. All five were accepted. It's the program itself that changed, and it was a policy decision at the Department of Food and Agriculture and at, I believe, the USDA that would bind their decision that it's just no longer feasible because the populations of LBAM, according to . . .

**SENATOR FLOREZ:** Right. USDA came out and told us in January that eradication was no longer feasible. Correct?

**DR. LEAVITT:** March 15th.

**SENATOR FLOREZ:** By 2015. What was the general cost of the eradication effort? Do you know how much we spent on this?

**MR. HEWITT:** Year to date throughout the entire process?

**SENATOR FLOREZ:** How about just the process so far.

**MR. HEWITT:** The process in total, Dr. Leavitt?

**DR. LEAVITT:** Yes, thank you, John. I can tell you what the state of California—or what the CDFA has spent, and that is, through January of this year, which is the latest numbers that I have, from the beginning of the program we spent approximately \$39 million of federal funds and approximately \$4.5 million of state funds. The USDA spent, of course, more on their own behalf.

**SENATOR FLOREZ:** Let me ask—we're at the close of my legislative career here in the Legislature, and the Governor's as well. Depending on what side you're on, it could be a positive day for either. But I think the issue I have leaving this place is how do we know the program won't change when we're gone? That we won't go back to spraying? I mean, how does this EIR get placed in some sort of stone that people refer to it as—I just said to you, will we ever spray again? and I think the answer was—what was the answer actually?

**MR. HEWITT:** The answer with respect to the eradication or the control and suppression?

**SENATOR FLOREZ:** The spraying.

**MR. HEWITT:** The Department will not be using aerial application of pheromones to treat the light brown apple moth.

**SENATOR FLOREZ:** Do I need to put that in statute before I leave so that all of us leave here with some sort of sense that we made—I'm mean, I'm just wondering because, you know, things change. Or does that hamper the Department, from your perspective, in terms of some sort of future view of the apple moth? I mean, the EIR gave us an indication of what should be done, USDA told us its opinion, but if we were to put a bill in and say, *This will end this for good*, based on an EIR that I think people look to and say, *Okay, this says contain and suppress*, would that be something that the Administration or CDFA would support?

**MR. HEWITT:** Senator, I can't speak on behalf of the Administration with respect to prospective legislation, but if I may explain a little bit about the significance of the findings documented as it relates to the Environmental Impact Report, because I think the short answer is "no." I don't think, Senator,

that you need to carry legislation for it because the findings document, with respect to the Environmental Impact Report, lays out, essentially clarifies, and supersedes in some respects what's in the Environmental Impact Report, and as a policy statement, the removal of the management tool of aerially treating the light brown apple moth with pheromones, that door has been shut.

The opportunity, you said—you know, if the Department came back, the Administration came back, they would have to undergo subsequent environmental review process to go ahead and open that door back up. So, the public would be invited back in at that point, Senator, to have a discussion and a debate about whether or not that's the correct avenue to proceed down.

**SENATOR FLOREZ:** So, basically you're telling me that every type of decision in this case should have an EIR prior to the choosing of, let's say, aerial spraying, or something of that sort—eradication efforts.

**MR. HEWITT:** I'm not sure I follow the question, Senator, but all projects that the state or CDFA undertakes are subject to the California Environmental Quality Act.

**SENATOR FLOREZ:** But when the Governor asked for spraying, did he have that in his briefcase and didn't show any of us? because I'm not sure there was an EIR that allowed for that—just a statute. I'm mean, that's what I mean. Why would we have done this type of study prior to this aerial spraying, period?

**MR. HEWITT:** Well, the Department made the decision basically to utilize . . .

**SENATOR FLOREZ:** Based on what?

**MR. HEWITT:** . . . aerial application of pheromones as a management tool in 2007 to try and eradicate the light brown apple moth because the population numbers were so low.

**SENATOR FLOREZ:** But it wasn't based on an EIR, correct?

**MR. HEWITT:** That is correct. We utilized two different tools under the California Environmental Quality Act to proceed with our activities.

**SENATOR FLOREZ:** What were the two tools?

**MR. HEWITT:** We used an emergency exemption as well as a categorical exemption under California Environmental Quality Act.

**SENATOR FLOREZ:** How are those triggered? Is the Governor calling for a state of emergency in this?

**MR. HEWITT:** Well, the Department of Food and Ag would make an evaluation about whether or not—first of all, the general CEQA checklist would be: Is the proposed activity a project by definition under CEQA? If it is, the first threshold would be: Is it categorically, or some other ways, exempt from the CEQA review process?

**SENATOR FLOREZ:** And most things that are exempt from the CEQA review process are emergencies, correct?

**MR. HEWITT:** I don't know the percentages, Senator, of . . .

**SENATOR FLOREZ:** Why was this an emergency? I mean, today we find out now we're in a control and suppress environment with, you know, Marin and Santa Cruz and suppression and control, and small outlying areas with five moths under an eradication type of issue. But that doesn't seem to sound an alarm as an emergency, although it's important—trade issues have been mentioned, you know. That's the number one thing is to move agriculture through the process.

But I'm just trying to understand how we prevent—you know, our role here, obviously, is to do oversight, and when we do oversight, we have to ask, and we should ask, questions about how can we learn from this particular 2007 to 2010 experiment? if you will. And you're telling me that under CEQA, you're allowed two types of exemptions that would not force the Department to do a full EIR, and I'm just wondering: how do we create a system that would have you look at an EIR so you would have made this decision in 2007 versus today?

**MR. HEWITT:** Senator, my general thoughts are that the CEQA process is extremely protective of the public's opportunity to provide input.

**SENATOR FLOREZ:** It is, but the problem is, is that the Governor didn't utilize that process when he did the spraying in 2007. I mean, that's the entire

gist of the problem is it didn't allow for this type of transparent discussion. It was just spray and ask questions later, and then there was an outcry, and then spraying stopped, and there was a bigger outcry, and then there was an EIR, and now we find the Department standing before us saying, "Oh no, no, we're not going to eradicate, we're just going to control and suppress," which was the original call back in 2007. The question is how do we—we're basing it on the feds who made a decision, the USDA, and also our own EIR now. The question is, just simply: How do we prevent those types of decisions from any Administration and Governor Schwarzenegger, Governor whoever? I mean, how do we allow for CDFA to make substantive decisions based on good science?

**MR. HEWITT:** The decision that the Department made with respect to the aerial application of pheromones for the light brown apple moth was based on what we believed to be the environmental and economic risk to California at that time. As USDA has articulated in their most recent reports, 33 states, 2,500 plant species, and in California alone, \$200 [million] to \$500 million of crops are potentially at risk annually. Those are some of the contributing factors that the Department used in determining to proceed forward with the aerial application of pheromones as a management tool in '07.

**SENATOR FLOREZ:** I understand that, but I think, you know, today we look back and you stand on an EIR that says we have other methods. Is it correct that the state Department had to be sued in order to produce this EIR? I mean, it wasn't something you voluntarily did, right?

**MR. HEWITT:** I disagree, Senator.

**DR. LEAVITT:** I believe that we started the EIR process before the lawsuits, Senator.

**SENATOR FLOREZ:** How much before the lawsuits?

**DR. LEAVITT:** Several months, I believe.

**SENATOR FLOREZ:** Several months?

**DR. LEAVITT:** Yeah.

**SENATOR FLOREZ:** Okay.

**DR. LEAVITT:** It was talked about at the very beginning of the program, and it took a while to do the initial study and go through the steps that John Hewitt was just saying.

**SENATOR FLOREZ:** Okay.

Let me just go through a few more questions. I'm getting a clear picture of kind of what we want to do here from a legislative point of view. I'm just trying to see if I can get a few more questions answered.

The controls that are currently in the EIR that you outlined at the beginning of your testimony say pesticides—or aerial spraying itself will not be utilized in any conditions—under any conditions at this point.

**MR. HEWITT:** That is correct, Senator. With respect to the light brown apple moth program, our findings set and provide the clarification from our final EIR that the Department will not be utilizing aerial application of pheromones as a management tool for the light brown apple moth.

**SENATOR FLOREZ:** But then, I guess, I read this as saying that at least in populations of areas of 100 persons or less, that aerial spraying is allowed. Is that correct?

**MR. HEWITT:** Correct, Senator. That statement appears in the final Environmental Impact Report, but that statement is clarified and superseded by what is in the findings, and that is, the Department's position that they will not use the aerial application of pheromones as a management tool for light brown apple moth treatment.

**SENATOR FLOREZ:** And in terms of the fall/spring, there were reports of respiratory symptoms. How did we deal with that data in this particular EIR? Was the health effects of this taken into account?

**MR. HEWITT:** Are you talking specifically about the environmental review process or about the complaints from citizens relative to the 2007 treatments?

**SENATOR FLOREZ:** The 2007, and was the testimony then taken into account in terms of some of the findings of the actual EIR itself?

**MR. HEWITT:** Dr. Leavitt.

**DR. LEAVITT:** Thank you, John. Yes, in the actual EIR itself and the alternate formulations, not the ones used in 2007, and it had the maps of where we were applying. In the comments, however, in the responses to comments, which is the last part of the EIR, we did address the question you're asking about the 2007 aerial applications. We referenced the studies done by the Office of Environmental Health Hazard Assessment and the Department of Pesticide Regulation and the process they put in place to track future reports of this type, and we referenced their report, that's been in the public arena now for, I think, for two years, saying they found no direct connection between the sprays and the pesticide illnesses.

**SENATOR FLOREZ:** This EIR has now been certified, is that correct, as of yesterday, today?

**MR. HEWITT:** That is correct, Senator.

**SENATOR FLOREZ:** Okay. So, all of the methods as put forth in the EIR now is the official policy of CDFA of what you're following then, correct?

**MR. HEWITT:** That is correct, Senator.

**SENATOR FLOREZ:** Let me just ask a few more questions.

Do people have recourse under your current methods? In other words, do people still disagree with even your implementation of the EIR? Are there other means for people who feel grieved to deal with CDFA and . . . ?

**MR. HEWITT:** Respective to the general operation, the program moving forward, or their remedies under CEQA, or what?

**SENATOR FLOREZ:** How about the moving forward?

**MR. HEWITT:** Moving forward? The Department's always open to, and responds to, comments that the public may have with respect to the management of this program going forward.

**SENATOR FLOREZ:** Okay. That's all the questions I have. Thank you.

**MR. HEWITT:** Thank you, Senator, for your interest and basic speeches.

**SENATOR FLOREZ:** Thank you.

We'll take public comment now. And you can feel free to come up again if you feel you heard something that you want to clarify. Thank you.

All I ask is that you state your name for the record.

**MR. MITTELSTAEDT:** This is Chris Mittelstaedt again. I'd just like to follow . . .

**SENATOR FLOREZ:** Take a seat. Don't worry, we're not in a rush here. Trust me. This is a short hearing. You can ask Mr. McAfee. We normally have six- or nine-hour hearings. So, this is midnight hearings. This is fine to get it on the record. Let's get it all on the record. That's the point.

**MR. MITTELSTAEDT:** Chris Mittelstaedt again from The FruitGuys, and I just wanted to clarify a point that I had made in response to the deputy director from the USDA—a point he had made about the light brown apple moth. I'm sorry, about product coming out of New Zealand from foreign countries that are coming into the United States he said were inspected for things like light brown apple moth. As a follow-up to that statement, I just wanted to clarify that the point that I was trying to make is if the goal of moving product into foreign and domestic markets is the goal of the CDFA, that we're looking for just equality and parity. The difference between the two, and to note, is that in New Zealand, if something is grown in an orchard and there is one or two light brown apple moth, that crop is not stopped from being exported as it is here in the domestic market, where if there is one or two apple moth, that crop is stopped—as the example that I gave earlier with Blue Moon Organics.

**SENATOR FLOREZ:** Thank you.

**MR. FRANK EGGER:** Thank you, Senator, for holding this hearing this afternoon. Frank Egger, a former seven-term mayor of Fairfax in Marin County. I've served on local, state, and federal agencies, boards, and commissions for 46 years, including the California Coastal Commission and the Golden Gate National Recreation Area Board of Control. I currently serve on the Marin-Sonoma Mosquito Vector Control District and the Ross Elliott Paramedic Authority.

The CDFA has been “crying wolf” over LBAM for three years. There has been no damage—none—to crops in California. The only damage has been to

farmers by the unlawful quarantines placed on them by making it difficult to move products to market and even prohibit the movement of some ag products. When the government bases its decision to quarantine a crop on an incorrect and faulty premise, and it is not based on sound science, then that quarantine is unlawful.

In 2008, the CDFA was telling us LBAM will destroy 250 crops, including grapes, apples, and cherries. We were told that LBAM would destroy coast redwoods. They said that there was an emergency. They said they had to aerial spray and the pheromone CheckMate was safe. They held organic farmers hostage in 2007. If they agreed to be sprayed with CheckMate, they would not lose their organic status. That's what they were told.

The CDFA said the inert ingredients were safe. As a result of Governor Schwarzenegger's releasing of the list of inert ingredients, the so-called secret ingredients, the public found out what the 11 inert ingredients were. One was a carcinogen, one an mutagen, one an endocrine destructor, and TMAC. TMAC is a product that cannot be used on any crop whatsoever, be it organic or conventional.

In a 2008 lawsuit filed in federal court in San Francisco against the EPA, the results were that CheckMate, the safe pesticide, was pulled from the market for use against LBAM. The EPA reversed the emergency exemption.

The final Programmatic Environmental Impact Report found no damage from LBAM. It would appear that CDFA is now trying to distance itself from its own EIR.

The reason more farmers are not speaking out today is fear of reprisals from the CDFA. If they challenge the quarantines, next the state will begin inspecting the restrooms, looking for ADA compliance. Farmers are suffering from the economic downturn. Some may lose their farms, and the CDFA is piling on. The CDFA will continue to use aircraft to disperse irradiated moths. They have not said they're not going to use aircraft to spray other pesticides. Only pheromones won't be used aurally—be dispersed aurally.

I ask you to end the LBAM program as we know it today. Lift the unlawful quarantines and start over with a science-based Programmatic Environmental Impact Report. Again, counsel has not said no aerial applications of other biopesticides or sterile insects, only pheromones.

The print media continues to say LBAM will destroy up to 2,000 plants. CDFA needs to put this to rest once and for all.

Thank you very much, Senator.

**UNIDENTIFIED:** . . . ask the CDFA to stay in case there are additional questions?

**SENATOR FLOREZ:** I assumed that they would still be here. Sergeants, we may want to round the CDFA up. Thank you.

You may want to find them and call the Department and make sure they're here. I know they're not at Mr. McAfee's booth, so let's make sure that they come back here.

Yes.

**MS. CAROLYN COHAN:** Good afternoon. My name is Carolyn Cohan. I'm a clinical psychologist and a member of MOMAS (Mothers of Marin Against the Spray). MOMAS came together in 2008 to oppose the light brown apple moth aerial spray program. We represent more than 500 mothers and families in Marin County. Our mission is to reduce the level of environmental toxins and pesticides that children are exposed to, to provide a healthy nontoxic environment for children.

I wanted to address the topic of pesticide use and health impacts on children who are particularly vulnerable to pesticides. The literature is very clear that pesticide exposures are contributing to exponential increases in illnesses. such as asthma and autism. Other health concerns associated with pesticide exposure include childhood cancers, infertility, ADD, Parkinson's, MS (multiple sclerosis), thyroid problems, and early puberty. The effects of pesticides can be multigenerational; whereas, not just those who are exposed to the pesticides will be impacted but their children or grandchildren.

When we look at the pesticides planned by this program, we see that they're designed to create a chronic exposure to the chemicals that they emit over long periods of time. For example, when pesticide-laced twist ties are placed in trees in a yard where children are playing, they will be exposed on a regular basis to a cloud of chemicals.

I think that what people need to understand is regardless of the mode of application of these pesticides, whether it's aerially or by trucks or backpack sprayers or twist ties, that the chemical exposure is still the same to children and that people need to understand this. And the health impacts associated with this exposure will still be the same.

Lastly, the pesticides planned by the light brown apple moth program are not adequately tested for human health impacts. The CDFA has kept the pesticide formulation secret because they're trade secrets. I think the people are entitled to know what they're being sprayed with. In the EIR, I don't know if they've changed this since yesterday, but the EIR entitled them to come by force into people's property and, you know, to cross over their fences and to spray their property without consent.

So, I think that this program is wrong, and MOMAS does not support this program. We would like to see it ended.

Thank you.

**SENATOR FLOREZ:** Let me ask you a question before you leave. So, even the twist ties, you're very concerned about the transparency of information and the safety of that particular product even though it's not aerial sprayed.

**MS. COHAN:** Absolutely.

**SENATOR FLOREZ:** Okay, I didn't know that. We'll try to get you that. I know and understand trade secrets, but let's try to get further down the road on that, if we could.

Thank you.

Yes.

**MS. DEBBIE FRIEDMAN:** Thank you. And that is true that they have not disclosed the inert ingredients in the twist ties yet. So, that is very disturbing. The fact that they have been talking about stopping the aerial spray program is a good step, but they have not mentioned, once, stopping the ground spray program. And when they can get warrants and force their way onto people's properties and spray, which they did in Ojai, it's still a very concerning issue for us.

I'm Debbie Friedman—sorry—chairperson for MOMAS.

It's time to change the way we manage pests in California. The way it is now and the way it's been for decades, as Dr. Carey discussed with the medfly, it's making our children sick.

My son Ben is ten years old. He's here today with me. Child toxicologists have called children like Ben "the canaries in the coal mine." He has serious asthma, eczema, allergies, and a weakened immune system. When doctors, including top specialists, worked with us when he was an infant, most of those doctors told us he was the most sensitive, serious case they'd ever seen of these types of issues. He's had ten long years of chronic health problems, and his health is seriously impacted by pesticides. When we drive through agricultural areas or stay near golf courses, he breaks out in hives and within a few hours needs his inhaler for his asthma. Those same doctors today have told me that they are now seeing more and more children like Ben, and they're very concerned about what they're seeing. This is a recent phenomenon.

Chronic health problems like Ben's are becoming epidemic in our society. We know that babies today are born with more than 200 industrial chemicals in their body, and every day our lives are impacted by these chemicals, and in our home it impacts our family. I'm unable to return to work full-time. I was a corporate attorney before I had children. And even with insurance, our medical bills are so high it's equivalent to a second mortgage.

So, it's time to change the way we do business in this state when it comes to managing pests and using pesticides. Every time we use and spray

pesticides, whether it's the ground sprays, whether it's the aerial sprays—and I did notice that they really just said they're stopping the aerial sprays just for the light brown apple moth. They made that very clear that they could do it for the next pest, and I don't think we should let that go by easily.

Every time we expose our children to a cloud of pesticides from the twist ties or sticky goos and bushes full of pesticides, we're exposing our children to chemicals—and toxic chemicals in many cases. It's in the air. It ends up in our water. It's in the grass where children play. It's in our food.

We're very disturbed that the CDFA has been forcing farmers to spray pesticides on farms, forcing growers to spray, forcing nurseries to spray for this light brown apple moth, which we've heard today is really not the problem that they're making it out to be.

Children take in more toxins than adults because of their metabolisms and frequent outdoor play, and they have a harder time expelling toxins because they lack certain enzymes. And I think it's really significant that the majority of health testing for pesticides is done by the pesticide companies themselves.

So, we are asking, MOMAS is asking, the USDA and the CDFA to support our farmers and to help them develop a system that's robust to pests and to minimize pesticide applications, whether it's ground sprays, sticky goos, twist ties, aerial sprays, or any of these applications. Because it's not working.

Thank you very much.

**SENATOR FLOREZ:** Thank you. Good point on the spraying, not just this one as well. Thank you.

Okay.

**MR. EDWARD SEGAL:** Thank you, Mr. Chairman. Good afternoon. I'm Edward Segal. I'm chief executive officer of the Marin County Association of Realtors, and I want to thank you for the opportunity to speak with you today. I'm here on behalf of our 1,500 members to express support for the end of all the efforts to—whether it's control, eradicate, suppress, whatever the word is—stop the program concerning the light brown apple moth.

It's important to point out that although I'm speaking here today for the association, in the interest of full disclosure, you should know that I own and live on a 7-acre organic apple orchard in Sonoma County.

First, a little brief history. We first got involved in this issue back in 2008. At that time, up until about an hour ago apparently, the state was planning to conduct an aerial campaign to eradicate the moth. As part of the program, airplanes were going to repeatedly spray nine northern California cities with pesticide-filled plastic flakes every 30 to 90 days for several years. Our association got so concerned that this aerial spraying would adversely impact the quality of life in Marin that we asked the state to limit the campaign to a ground-based approach. Our realtor members were so concerned that they insisted that we include a warning about the potential for aerial and/or ground spraying throughout Marin in our own countywide disclosures form that we ask potential buyers to read and sign.

We did as our members asked, and we also added the following language to the form: "The buyer is advised to consult with environmental health specialists and physicians for further information regarding pesticide spraying."

Aerial spraying which today the state announced is no longer an option is good news and is definitely a step in the right direction. But we share your concerns, Mr. Chairman, that after we're gone, is the state going to go back and implement it? So, steps should be taken to ensure that the option will never be an option again, whether it's a light brown apple moth or any other pesticide.

If the aerial spraying had continued, or for some reason it kicks back into place into the future, such spraying could have a devastating harmful effect on an already sluggish real estate market. According to an economic impact report prepared by the California Alliance to Stop the Spray, there could be as much as a 10 percent drop in home values in the nine northern California cities where the spraying was going to take place.

So much for the history.

Today we are joining with a broad coalition of farmers, businesses, and community groups and organizations to call for the termination of the entire light brown apple moth program. Why? Well, based on what we've heard today and what we've read before, there are simply too many unanswered questions and unresolved issues associated with the program. We would much rather be safe than sorry and hope this committee will feel the same way.

Indeed, based on what we've heard from the experts, the program appears to be a solution for a problem that no longer exists. And I must ask the obvious question: If the light brown apple moth, as of about an hour ago, is no longer worthy of eradicating, is it even worth trying to control and suppress?

In these challenging, disturbing economic times, the state of California should use its very limited money and precious resources to help address real problems that are much more pressing. We hope the state will do the right thing and end the program now.

Thank you Mr. Chairman.

**SENATOR FLOREZ:** Thank you.

**MR. ROY UPTON:** Good afternoon. Roy Upton, and I represent Citizens for Health. We have 97,000 members nationwide.

As you know from a previous testimony that I provided to this committee, I was a co-collaborator on the development of the reclassification petition. I want to give a little bit of the highlights of that process.

USDA took that and reviewed our reclassification petition and denied the reclassification of LBAM at that time. They then sent their response to the National Academy of Science for their independent review, and many people within both the state and the federal legislatures were waiting for this review, because I thought that NAS would bring independent science to bear on the issues. But many people have not been made aware of what the findings of the NAS review were, and I'd like to put that on the record.

First off, the NAS consensus was that USDA did not fully consider and address the specific arguments calling for the reclassification of LBAM. Neither

did they “conduct a thorough and balanced analysis” supporting the conclusions that were made in the two LBAM reclassification petitions that were submitted, but they nevertheless denied the classification—or reclassification, even though NAS said that they didn’t support that position.

Two, is USDA requires more robust science to support its position in denying the reclassification petitions and continuing the LBAM eradication program. They also noted that USDA’s biological predictions, which actually formed the very justification for the LBAM eradication program from the beginning, it was described by NAS as “problematic and in some cases not based on sound rigorous science.” The Plant Protection Act, which is the law that gives USDA the authority to implement these programs, requires that all decisions be based on sound science. NAS clearly said that this was not the case.

NAS also reviewed unpublished genetic data that USDA’s APHIS had, and noted that due to the genetic diversity of LBAM that’s being found in California, that there couldn’t be these populations just popping up from single introductions as alleged by USDA and CDFR, and that it is highly unlikely that LBAM was a new introduction to California. This is the NAS, not us. They also noted that USDA’s assertions that trapping data suggest that populations are progressively increasing, they described as “misleading,” because those increasing numbers can also mean that trapping is only becoming more efficient and more prevalent.

They noted that USDA has alleged that LBAM has adapted to new host plants, and that’s where they say there’ll be a potential damage to 2,300 different plants. In NAS’s review, this should be omitted from their reports because those arguments are “not well founded.” The scientific literature reports on no more than 250 plants that may be impacted by LBAM, and most of those—99 percent of those—plants are actually common weeds and no economic or little economic significance.

The NAS committee also expressed “substantial concerns” regarding the economic component of the USDA’s justification for the LBAM program “based

primarily on,” what they said was “the ambiguous foundation of the analysis for the predicted geographic distribution of LBAM and the inconsistent and sometimes incomprehensible analytical techniques used,” and further noted that they provided no source to substantiate the predictions for damage—the estimates used for damage. NAS also noted that USDA did not consider other potentially realistic scenarios by which LBAM could be cost effectively managed and considered USDA’s projections to crop damage to be (quote/unquote) “unlikely.”

Lastly, they noted that USDA implied that the previous literature provided evidence that the potential for environmental damage to trees and native flora was substantial. NAS agreed with our reclassification petition in noting that the scientific literature does not support that LBAM is a significant threat to trees and native flora, and this is continued to be alleged by USDA.

I believe that this is the type of information that needs to get across to the state and federal legislature, because this was a review by NAS that was commissioned by USDA, not by us, and probably the reason why the EIR reads as it is today.

Senator Florez, you asked a couple of questions about trading to Canada and Mexico. The answer was that in order for LBAM—or for crops to go into Canada and Mexico, that they needed to be treated. When they’re treated, that means they’re treated for all pests, not just LBAM. So, whether LBAM is there or not doesn’t matter—they need to be treated. New Zealand is able to trade worldwide and meeting very strict LBAM-free restrictions in countries all over the world. The U.S. can do the same. Canada and Mexico originally only had LBAM restrictions to harmonize with the U.S. to maintain access to U.S. markets, not independent of LBAM itself or because of a biological threat of LBAM.

You also asked about eradication—whether or not it was 100 percent. The manner in which eradication is defined by CDFA and USDA is more political than biological. The scientific literature “eradication” is 100 percent of destruction of the population so that they can’t repopulate in a specific area.

That is not how CDFA and USDA defined eradication, but that is how eradication is basically defined in the entomology literature.

This has to become an agricultural issue, not a community issue, and I think that's the message that I want to leave, and I think that's the message that MOMAS has just brought as well, is that this is a crop quality issue. This is managed as a crop quality issue worldwide where LBAM is endemic and has been naturalized for more than 100 years, and this is how we have to do it today and not allow these programs to come into our backyards and our communities.

Thank you.

**MR. DANIEL HARDER:** I'm Daniel Harder. I appreciate the opportunity to provide public comment. I was a panelist the previous engagement here.

My experiences have been from the beginning of this issue. I've maintained from the beginning that eradication is not possible and eradication is not necessary. I'm glad to see that CDFA has recognized that eradication is not possible. I would like to provide just a variety of comments here.

Professor Gutierrez's comments about CDFA not respecting the science—I'm a Ph.D. scientist in botany. I know the science. I investigated all the references prior to it—prior to developing the petition. I'm a coauthor on the petition to reclassify the light brown apple moth with Roy Upton and others. And worse, CDFA rewrites the science to fulfill the conclusions that are necessary for their own documentation, and I point to, in fact, an internal memo that was circulated by Robert Dowell of CDFA, showing that there would be increased pesticide use by people if nothing was done to affect the populations of LBAM. Well, it's great to write your own papers, but when they're peer reviewed and torn down because they're not based on real science or precedent for it, that's fine. I spent a considerable amount of time last time giving comment about that.

Since eradication is recognized as not being obtainable or a realistic goal, there really is no reason to implement control methodologies outside of agriculture. I strongly agree with Roy Upton's previous comment that this

needs to be an agricultural issue exclusively. There is no reason to involve any public citizen, any public lands, any other area outside of ag production to control light brown apple moth and its movement. Even in control and suppression.

There's also a fear factor among—and we pointed earlier about why farmers weren't here. I also would like to say why there aren't many scientists here. Entomologists get a lot of money from CDFA to do work on pests that are of economic importance. Not a lot of LBAM work has been done because we realized early on internationally—not a lot of work has been done on LBAM recently because once they figured out what was going on with LBAM when you spray with pesticides, you kill the things that eat it, and now you have a problem with LBAM. That's been shown in the literature over and all. There is a fear factor of scientists and entomologists losing their funding from CDFA if they make a stand on this. Being naïve at the beginning, I'm quite experienced now to understand why.

With the new goal of control, not eradication—and the basis for the development of the EIR and the process was all based on eradication. Everything is on eradication as a goal. Now that there's a completely different set of circumstances for developing an EIR, isn't a new EIR necessary, to be developed with these new conditions? Because, for instance, in that EIR, the original draft EIR, they talked about integrated pest management as a tool. Well, they said, *We're not going to consider that here in this EIR because integrated pest management has a goal of not eradicating but controlling, so we're not even going to consider it.* Well, is IPM now reconsidered in this final between the draft and the final? Has it been all reconsidered and reemphasized? Because IPM and Kevin Nixon, the state entomologist, told me when I submitted my report from New Zealand—I spent weeks in New Zealand and reported on what I found from scientists there about light brown apple moth, how they handle it—he said, *This report that you produced would be great if we were going to control this thing, but we want eradication, so this report is worth nothing to us.*

So, it'd be great for them to revisit IPM seriously, and I really believe a new EIR—this EIR needs to be thrown out and a new one produced.

Despite what CDFA has said and stands by, it is likely, when closely evaluated, that no pest has been completely eradicated. And this is something that Jim Carey has reemphasized over and over again.

I also want to remind and put this on the record that before the introduction of the aerial spraying, there was not a single efficacy trial or treatment for efficacy against the light brown apple moth and its control before it was sprayed on people, and the same is true for the twist ties. The twist ties will not work in urban areas, mixed forests, mixed areas. They are made and designed for agricultural systems exclusively.

There is no testing on humans of the pheromone at the levels they're talking about in these communities, in schools, next to schools. They oversprayed three miles. They had trouble with the emitters when they were spraying in the air. Some areas got double/triple treatments. What about those areas? Those places are enhanced pheromone concentrations. How are they going to make sure over eighteen counties, or let's say just two counties, how are they going to make sure that that pheromone is the exact concentration they need to be most efficacious for light brown apple moth when you've got hills, canyons, off-shore breezes, onshore breezes, all that stuff happening? How can it be? There is no way.

I did want to correct one statement by Dr. Dowell: that there are very few predators in California that eat the light brown apple moth. A UC researcher, Nicholas Mills, studied the light brown apple moth. His expertise is natural predators to insects. He showed that not less than 13 predators exist in California that eat light brown apple moth.

**UNIDENTIFIED:** Parasitoids—direct parasitoids.

**MR. HARDER:** Okay, parasitoids and predators—okay, the same thing for controlling—they're used in the same way for controlling the insects. So, there are not only a few, there are many. And Nick Mills made the point of emphasizing that there is an enhancement of parasitoids and predators that

affect light brown apple moth beyond what's actually controlling the native moths that are in California.

Thank you very much.

**MS. PAULINA BORSOOK:** My name is Paulina Borsook. Since the time I was able to travel independently in my teens, I've always sought out farmers markets wherever I've gone. I'll never forget the taste of an apple I bought at a farmers market in rural Brittany in the early 1970s. I've also patronized farmers markets wherever I've lived, away from my beloved native California. I so respect the work farmers do and trust they know how to best manage their soils and plants.

I'm also friends with Guillermo Payet, the Santa Cruz entrepreneur who started LocalHarvest, the premier national website for family farms and local agriculture. At one point ten years ago, when the website was first being launched, I even wrote many of the product descriptions of the fruits and vegetables that are listed there.

I know that CDFA has been very concerned about what impact LBAM might have on the farms, fields, and open spaces of California, but the sellers I've talked with at the farmers markets I've been patronizing in Santa Cruz over the last several years haven't told me of any problems with LBAM but have told me about the problems caused by LBAM quarantines.

Four years have passed since retired UC Berkeley entomologist Jerry Powell first spotted what he thought might be an LBAM in his Berkeley backyard. By now, almost half a decade later, I think we would all know if LBAM, a bug originally from Tasmania—it's not even native to Australia—were going to defoliate California trees and plants. But by 2010, we here in California really don't have to worry that LBAM will somehow behave much differently than it has in New Zealand, where it's been naturalized for almost 150 years. New Zealand has a climate and terrain very similar to California's and grows many things, such as Chardonnay grapes and Monterey pines, which we think of as being distinctively and importantly Californian. In the

places where LBAM likes to live, it's about as common in New Zealand as it is in California.

LBAM's meek and mild behavior in California has demonstrated that we can really look to models such as New Zealand's Bald Hills Vineyard whose award winning Pinot Noir is created from grapes grown intercropped with flowering buckwheat, phacelia, and mustard. These plants host parasitic wasps which feed on LBAM, so the moth remains no problem at all for the sustainable vineyard. We can also believe what Dr. Michael Butcher, technical manager of Pipfruit New Zealand, has told us. Pipfruit New Zealand is the business association of apple and pear growers in New Zealand, and what Dr. Butcher has said is that LBAM is what he calls "background managed to very low natural levels with a particular reliance on wasps." He says LBAM is not a major damaging pest of fruit crops but is a major quarantine pest for exporter fruit to the United States.

So, I think it's time to trust the wisdom of our farmers and trust what our colleagues in New Zealand have told us. Let's let our farmers get on with their vitally important work and not bother them with the LBAM program. I feel we should end the LBAM program altogether because it doesn't seem to benefit anyone.

Thank you.

**SENATOR FLOREZ:** Thank you.

**MR. DAVID DILWORTH:** Senator Florez, committee members—my name is David Dilworth. I'm here representing the board of trustees of Helping Our Peninsula's Environment, or HOPE. So, I get to accurately say I'm bringing you "HOPE."

We are the organization that filed the CEQA lawsuit that was later copied by the city and county of Santa Cruz, which ultimately proved successful and forced the Environmental Impact Report.

I not only appreciated your questions, but the thing that you brought out I thought was so important was that the EIR worked. It did. It changed the

goals, it changed the methods. The EIR system worked. The problem was CDFA didn't want to follow the law. They had to be forced into it.

I have some recommendations for you a little bit later on, but the aerial spraying actually appears to have been counterproductive. As they point out, the trapping is what they're basing everything on, and the numbers went up after they sprayed. It doesn't seem like that actually had the effect that they were intending. What we've heard here today, it appears that the spraying was more harmful than the moth was. The moth hasn't done any damage. We're still at zero damage to the crops in California and our environment, but the CDFA's response to it, the quarantine and so forth, has cost tens of thousands of dollars. It's our opinion that LBAM is a solution in search of a problem. There's been no damage, and so, there is no need for this project.

What has happened since September—August/September 2007—is that there's been a movement, that you have a room full of highly informed people. They now know the science, they now know the law, and this is just a representative sample of thousands of people throughout the Central Coast who are here to support you for doing something that fundamentally changes the way that business has been done in the past. As Professor Carey pointed out, it needs a top-to-bottom overhaul. You have a lot of support from highly informed people.

CDFA has been exhibiting, I want to call it, “a bunker mentality”: hide, don't answer questions, provide “fish stories,” bad science. Actually, bad science, I think, would be too charitable. I would call it “pseudoscience.” I write about the difference between science and pseudoscience, and pseudoscience is when you make things up that do not have a clear, unambiguous hypothesis. CDFA, trying to nail them down on what they actually have in mind, is, I think you could call it accurately, “moving the goalposts.” We have the draft EIR, we have the final EIR. Both of those said, what they were going to be, eradication was the goal. Then, in the findings and certification, they changed the goal. Courts do not often hold up problems with EIRs. It's a very difficult threshold to reach, but one thing they hold up is a

stable project description, and they've just changed the fundamental description of the project that they have. In the Monterey Peninsula, we call this "staffocracy." It's goofy decisions and zero accountability.

I want to bring one factual thing to your attention. If you noticed very carefully, the general counsel for CDFA did not say that they would not be spraying aerially any toxins. Every time he used that sentence, he said, *We will not be aerial spraying pheromones.* That's a pretty serious thing to us. Some of the suggestions, we actually believe they may try to do things other than pheromones in the spring.

Here are some suggestions that would make the process better in the future. First, there is only one place in California law where bureaucrats (staff) are required to answer questions. Only one law. Very few people know that, but that's in the process when you respond to an EIR. Nowhere else are bureaucrats required. They're not required to answer questions. They're not even required to show up at your meetings. A law that requires them to answer questions would be a big step forward.

Second, there should be a penalty for "fish stories." When they make things up and it takes us two, three days, sometimes two to three months, to get the correct answer, and the burden is now on the public to find out what the correct answers are, and we find out we've been told something completely incorrect, they keep on going. We actually have an award that we're going to be presenting—this is the 2010 Whopper Award—to OEHHA director Joan Denton, and that is for not correcting the record on this no-link report. And you heard Mr. Leavitt just confirm that. He again said there was no link, but that's not what the report said, and that's not what OEHHA now maintains. But the public relations said that there was no link to any health effects. Leavitt still thinks so, and that's what the EIR went through.

Third thing is we would like to suggest that you require the best available science. Inhalation tests, tests on lungs, is still not available.

And here is our last suggestion: If someone wants to do business in California, we believe when they file for a corporation at the Secretary of State's

office, that they need to give up the right to have a trade secret when it involves inherently hazardous materials—things that can harm people. Trade secrets may be fine with Coca-Cola or anything else, but when you're going to be dealing with pesticides that have the opportunity to hurt people they're sprayed on or harm people who eat the food that they're used on, there should be no trade secrets.

Thank you.

**MR. MIKE DE LAY:** Thank you, Senator Florez.

**SENATOR FLOREZ:** Good to see you again.

**MR. DE LAY:** My name is Mike De Lay. I'm a State Farm insurance agent in Pacific Grove. Been doing it for 38 years. My wife and I are one of the 643 registered families that was harmed by the aerial spray. I endured the spraying twice down there in Pacific Grove, thinking it was safe.

I'm not here so much to speak on that because—well, one thing, my health has changed since that occurred, and we can't explain why or how but it has, and we still suffer and we still try to get back to normal health, which we have not been able to do.

They talk about "uncontrolled spray." I know those planes went over my house three times, and they said we'd never see it. Well, following the next day, I had brown splats all over my cars and house, and it stayed there for a long time. It was difficult to even wash off.

But that's not why I'm here. What we did was to try to deal with this issue, this threat, that came to us that was going to force us to either close my business and move away when they threatened to come back once a month for nine months for the next three to five years, or stop them. We went out to try to stop them. The idea was, well, we coordinated and created the Coalition of California Cities to Stop the Spray which resulted in a big effort from a lot of people, like David talked about, like myself, forced to learn on an issue that I didn't care about but yet threatened everything that I had, and my health, and my community, and other people in my town.

So, we went out and sought resolutions to stop it, and magically, miraculously, in three months we had 30 cities writing resolutions in opposition to aerial spray, and three county boards which legally represent 2.447—well, 2,447,494 Californian's represented by their local elected officials in opposition. But those resolutions, if you read them, are not only on aerial spraying. We pushed that issue because that was the major issue that we felt we could get attention on.

But if you go back to those cities and look at those county boards and look at what they said, aerial spraying was a major issue and an important one, but they were also concerned to the harm being proposed by other chemicals and other techniques that CDFA planned to use to bring pesticides, mind you, pesticides that are only designed for use in agricultural fields, that are poisons and toxins, and bring them into our homes and spray our families, our kids, our schools, our hospitals—just spray them everywhere—and force us to live with this stuff for some indeterminate time. That itself is insane! That's the point I say here, is why do we even talk about this? Where is it not even obviously wrong to bring something like that where we live and have to live with it day in and day out? I just don't understand that, and I know I see you today talking that same way, and I appreciate your questioning to the CDFA.

But in working with the people in the cities and talking to people, that's their concern: where are they taking pesticides and bringing it and making you have to live with it? I mean, that's just wrong at the get-go. I don't think you have to even argue that, let alone my individual unalienable rights given to me by birth in sworn testimony and oath by you and everybody here in this assembly to protect me of my rights. And I can't declare my rights and say, "Stop this. This is obviously a violation of that right"? But yet, they wouldn't. We asked them. They sprayed, and they're going to continue to come back, and, what? put pesticides by, we don't know, trucks, twist ties? We don't know. What's the next species coming? What's that one going to be like? They didn't say they're not going to spray. They're going to give up the pheromones,

but what about Btk or some other new, wonderful, miraculous pesticide they haven't yet revealed to dump on us, to bring it into our towns?

If I could ask anything, anything, would be a bill to forbid that kind of activity: bringing untested pesticides or chemicals and forcing people to live with them. How come we don't change it for the chemical corporations to change it, that they have to prove no harm?! No harm to any product before they use it. That was probably a far reach, but that's what the people want.

I think I covered all I wanted to say, and I really thank you for this chance and your efforts. I really enjoyed what you did with the CDFA. I really liked that.

Thank you.

**SENATOR FLOREZ:** Thank you very much for your testimony.

Yes.

**MS. HELEN KOZORIZ:** My name is Helen Kozoriz, coordinator for Stop the Spray Alameda County. I have come here today to voice my support for our farmers and growers.

As a patron of farmers markets for decades, I especially appreciate food grown in ecologically sustainable ways, without the use of pesticides. Over the past two years, I have heard many accounts of hardships experienced by our farmers under quarantine in CDFA/USDA's LBAM eradication program. None of the farmers I've spoken with consider LBAM to be a serious threat to their crops. However, they are threatened by CDFA/USDA tactics to enforce LBAM quarantines. Most are afraid to speak publicly for fear of retribution by these same agencies.

I have heard that CDFA/USDA eradication teams perform special LBAM inspections in agricultural fields. When a larva is suspected to be a light brown apple moth, it is sent to a laboratory for identification. Farmers are then notified by telephone with claims of positive LBAM identification but are not provided with any documented evidence to substantiate these claims. We know that for much of this time, positive LBAM identification of larvae has been inconclusive, according to USDA documents.

Farmers are forced to spray their crops with pesticides to eradicate LBAM. In some cases, farmers have no choice but to plow their fields under. When a harvest is destroyed, financial losses are incurred, which drives smaller farmers out of business. Moreover, forced applications of pesticides are particularly problematic for farmers whose commitment to chemical-free agriculture is often more stringent than USDA's own organic standards.

Since the inception of the LBAM program, berries sold at the farmers markets are more noticeably bruised. Berries are damaged by overhandling during frequent inspections for LBAM. During inspections, growers cannot operate their farms, which results in more economic loss. Increased paperwork places an additional burden on farmers, especially for smaller family-operated farms that cannot afford to hire more workers.

Almost three years have passed since CDFA first declared LBAM an emergency. Yet, there is still no documented LBAM crop damage.

CDFA dubbed LBAM "the light brown everything moth"—an insect purported to destroy crops if left unchecked, resulting in multibillion-dollar losses to the agriculture industry. In reality, unnecessary CDFA/USDA quarantines have hurt our farmers and growers, all for an insect that has proven to be of minor concern in the field.

Thank you.

**SENATOR FLOREZ:** Thank you.

Yes.

**PROFESSOR GLEN CHASE:** Senator Florez, thanks for having me today. My name is Glen Chase. I'm a professor of management systems. Before I get into my specific testimony, I'd like to turn toward the audience and recognize who exactly has come here from the public as a comparison to who's come here from the CDFA. Not just today but for some time. I've been in meetings and hearings since 2007, and I have yet to hear a single scientist that is supporting the position of CDFA. I've only heard management people that continue to say, *We rely on experts*; yet, they've never named those experts, to

my knowledge, and I've never heard from a single one. But I'd like to turn and just look to the audience to acknowledge who's here.

I see David Dilworth, who's head of an agency that brought suit against the CDFA and forced an EIR in this matter. I see Frank Egger, who brought suit against the EPA, and based on that suit, the CheckMate pesticide has since been disallowed across the United States in the manner that it was used on the people of Santa Cruz and Monterey County. I see Dan Harder, the former director of the Arboretum in UCSC, a person that, in my opinion, is the most expert on LBAM's effect on plants, hands-on, because in the state, he has the most experience hands-on with what LBAM actually does to the biggest variety of plants in our state and specifically those that have come from New Zealand and the Southern Hemisphere.

I don't recall Gutierrez's name, but he's a hero of mine. I've been reading and studying and analyzing Gutierrez' and Mills' report because they don't just make statements, assertions, that's it going to do something. They actually scientifically modeled it, and their model is consistent worldwide with where the moth actually lives. They didn't just assert it and say, *It'll live here*. They modeled it, and then they took the actual data and said, *Sure enough, we find it in New Zealand exactly where our model would have anticipated it*. So, the strength of their model is incredible.

James Carey—I couldn't possibly introduce him. He's an invasive pest specialist worldwide and he's here. We've got Roy Upton from a health organization, who also was a coauthor of the reclassification petition. So, those are the scientists. Excuse me if I've missed anyone.

And then we've got incredibly well-informed people, and I want to show you that this is what's come forward from the public, and I really appreciate this and I respect this. And I want to have you think about putting this up against the scientists that you've heard from, and if they existed, they certainly would have lined them up, as they certainly have with the attorneys.

Anyway, back to me. I'm a professor of management systems. My specialty is environmental economics, and I also teach graduate level in

statistics. So, I have expertise in differentiating and recognizing situations that are probabilistic versus ones that are causation. Anyway, it's my opinion, given that I have so much experience in management systems, that I see this program as something the CDFA wants to do, totally unrelated to the light brown apple moth. No matter what the changes are and circumstances, no matter how the objective changes, no matter what changes, the program goes forward regardless. And that's been the condition since we heard about this moth in 2007.

I had a prepared talk, but rather than that, I want to say that since 2007, when I first heard about this moth, there has been misinformation delivered by the secretary of the CDFA on TV news, by the public relations director Steve Lyle in the papers, and more recently by John Connell, who they've since retired.

But as an example, a practical example—it may not be as clean and as swift—but I want to talk about specific misinformation that's been delivered to you today in this room.

Crop damage. I've got the official Environmental Impact Report document here. And let's remember that the CDFA has reported crop damage since 2007 in community meetings, through the press, in their own press releases, and recently, if you've heard about berry damage. I'm going to read to you from the draft EIR, and remember, the draft is not an addition that got changed. The draft and the final EIR are what composes the PEIR, which is the Program Environmental Impact Report. Those two documents are it. The draft has most of the substance. The final has the comments to the public and the few changes that they may have made.

On Chapter 3, page 320, it says (quote), "No direct crop damages have been experienced to date in areas subject to existing infestation." That contradicts—this is a July 31, 2009, document. This document contradicts every claim of damage, CDFA. Since this document, CDFA has again claimed damage, and it goes through the press, and it's repeated by good people, innocent.

As of yesterday, I contacted the infested areas—San Francisco—no documentation of damage at the ag commissioner’s office in San Francisco. Approximately eight days ago, no documentation of damage in the Santa Cruz office. And these are the places where the damage has been consistently claimed.

Today you heard since development of SIT they can now do things. I want to bring to your attention that is misinformation. There has never been a single interference of mating of LBAM through SIT. SIT is still in the R&D stage. SIT is far from a stage that it can perform in this program, and if you were to talk to any of the distinguished scientists in the room, they would tell you approximately that LBAM is about the last candidate for SIT because of the nature of its biology. Very approximately, the condition of irradiating these moths is making them almost dysfunctional, let alone the thought that they could challenge wild moths in mating.

Expansion of LBAM was spoken today by the CDFA. That is an absolute assertion. There is absolutely no proof, no documentation, no basis that LBAM has expanded. Have they caught more? Of course they have, and of course, that’s been because of the—could be because of the variation in the traps and the location of those traps. So, I want to make sure that we don’t leave this room today thinking LBAM is expanding. That’s absolutely unproven.

Something about conviction of the CDFA: *eradication has been mandatory; it’s essential we eradicate*, up until a few days ago. And for the timing, the draft EIR said, *Eradication is mandatory*. The final EIR said, *Eradication is our goal*. And a few days ago, APHIS—which is the agency of the USDA that is driving this program—came out finally and said, *Eradication is no longer feasible*, which James Carey has said and these other scientists three years ago.

So, we heard today, and hear, that *Okay, so we’re going to control and suppress*, etc., etc. But I remember just days ago the technical working group said, *Eradicating is essential*. We’ve gotten messages from people in the

technical working group: they've never said that. They said something to the effect that, *Under the conditions that if the moth was just at the shore, right near the port, we could go and stop it right now.* But conditions were never that when we found them. But notice that CDFA gave up eradication without even a flinch. So, think about their conviction for any of the things that they've told you in this chambers that's so important to move on immediately.

We heard in this room today: How did this thing spread? *Natural*, they said, *was slow*. I would ask James Carey to add or correct me in any of this: that's exactly the way these moths move. Some of these moths are generally known to only move 100 feet in a lifetime. So, they've delivered that science that we know—it moves slowly—but then, what have they said?: *Modern transportation is responsible for this whole expansion of taking over of California by LBAM.* That's not even a good science fiction movie. I mean, you think about it yourself. And first off, I couldn't say "yes" or "no." It's an assertion that has no basis in science. They have no actual documentation of these moths being moved in trucks or trains or airplanes.

Statutory versus substance. Every time we corner them on the science, they immediately move to the statutory regulations; that they're doing this because USDA is asking. So, they flip-flop back and forth: *Oh, now it's USDA.* Is it the science? *Well, well. . .* So, we notice it goes back and forth.

There was a comment today by John, the lawyer for CDFA, I believe—I don't recall his last name. He said the public is invited back into the EIR process. I submitted 96 pages of questions to the EIR, to the draft EIR, and I can't recognize a single answer to one of my questions in the response to the EIR that CDFA included in the final EIR. Most all of my questions were grouped into a group question. I tried; I gave it my best effort. I couldn't pull the answer to my questions out of the group questions in the way they fabricated the answers.

John also said an aerial spray of pheromone. I want to clarify that for this hearing room. The dictionary defines pheromone as: a substance emitted

by an insect. There is not a single drop, nor has there ever been a single drop in any of the pesticides that CDFA used to spray, or that they intend to use on twist ties, or any other application. It is a synthesized chemical that has a similar attribute to attract moths. They choose to call it “pheromone,” and it’s attached with a huge number of other chemicals that we don’t know. Well, then they’ll say, *Well, it’s a synthesized pheromone.* A pheromone is a chemical emitted by an insect. Theirs is not, not a single drop.

And by the way, in that aerial spray, if you think, “What’s the big deal, synthetic or not?” the synthetic chemical they use and call “pheromone,” is not sufficient to fool the moth. The concentration that was in the air in Santa Cruz was approximately one million times greater than people would ever come in contact that were in proximity to light brown apple moth. And thanks to Dennis Knepp, another citizen who is a Ph.D. scientist in the Monterey area, to go into CDFA records, finally pull that out, and deliver that to a very small number of people, because it’s hard to understand in the general media.

There was a statement today here that 500 million crops are at risk annually. Jerry Powell, a retired UC Berkeley entomologist, first discovered the moth in his backyard in 2006, not in 2007 that CDFA continues to say. CDFA confirmed it in 2007. Now, think about this, about the probability and the statistics. Jerry is probably the only one in the state, being a micro moth specialist, who lived in the Southern Hemisphere. I don’t think back in 2006 another entomologist would have recognized the difference between an LBAM and an orange tortrix, which most people still can’t identify, but because he lived in the Southern Hemisphere, he suspected it. Did he find one? No. On two separate occasions, Jerry found one each in his backyard. So, think about the probability. Did LBAM arrive in 2006? The chances of that are the same, approximately, as an individual winning the main California lottery two times during the same year. So, in other words, even within a few years of that, it would still be that approximate probability. So, the reality is that statistically, if LBAM got here just ten years ago, it would be an incredible coincidence! One in tens of tens of thousands. More realistically, it looks like 30, 40, 50 years

statistically, and that coincides exactly with the statement that James Carey, with his expert opinion, says: it looks like that approximately. And he's encouraged the CDFA to do some significant analysis, but of course, they never did. They just criticized Jim for *Where's your paper?* when he was trying to encourage them to get on the right foot on this.

Today it was mentioned the EIR was started before the court case. You saw what conviction they had with that. They fought the judge not to do the EIR. So, let's put that on the record.

And by the way, it's the certification document that claims that they will do no aerial spray. The final EIR and the draft EIR, which is the full—you know, the Program Environmental Impact Report (PEIR)—still contains "aerial spray." So, it's only in the last few days that they've actually dropped this, since APHIS said it's not feasible to eradicate.

I'm almost there.

Today it was referenced that OEHHA—is it possible to read what was said in the record for something that CDFA said, or is that too troublesome now? Could that be read here?

**SENATOR FLOREZ:** Just so you know—I mean, the purpose of the hearing and public comment—or the purpose of the hearing in general is to build a transcript. So, go ahead. And I say that with affection. So, go ahead.

**MR. CHASE:** I forget the fellow's name from CDFA. What's the fellow that was up here?

**SENATOR FLOREZ:** Mr. Leavitt.

**MR. CHASE:** Yeah, Leavitt. Leavitt said something to the effect that OEHHA found either that there was no connection between the spray and illnesses reported or that the spray had not caused the illness. Can we read that back to see what he actually said? Can we read that in the record?

**SENATOR FLOREZ:** We don't have it here.

**MR. CHASE:** Okay. I'll go forward either way.

**SENATOR FLOREZ:** Why don't you give us your interpretation of it, okay?

**MR. CHASE:** Yeah, I will. Whether he said it wasn't the cause, or OEHHA said it wasn't the cause, or that there was no connection, I'd like to read what OEHHA actually said. I've got the document here.

Quote: "Our review of the symptoms reports received following the aerial applications was unable to conclusively determine whether or not there was a link between the spraying and the symptoms reported."

There's also been previous statements of nontoxic of these substances. I'd like to read this to you. This is from OEHHA again and also a joint report from DPR as well—Department of Pesticide Regulation. On page 2 of their October 31, 2007, report—I believe it was released to the public on November 18th, approximately—the lepidopteran pheromone, that they call "pheromone," a Category 3 toxin. And for the record, Category 1 is the most toxic toxin. That would be hazmat suit; you know, fall over and die without it. Category 4 is the lowest category of toxicities; it's a Level 3 toxin. They sprayed that on the people and children of Santa Cruz and Monterey counties. And for clarification, when a woman, or a parent—I usually think of the mother, so I say "a woman"—when they go talk about protecting their child and nontoxic substance, that is not a Level 4 toxin. Nontoxic substances are outside the range of toxic substances 1 to 4. Well outside.

I've mentioned CDFA has always relied on experts that have never come forward or ever even been identified. We've requested them over three years now.

And what I'll ask finally, and I ask from this committee—earlier, Senator, you said that this committee has the jurisdiction over this agency and over this program. I sincerely ask that you literally stop this program. You use any routine measures or extraordinary measures that you have to stop this program. We used to call it "eradication program," now we call it differently.

I understand future policies is a great thing to focus on, and hopefully in the future we will, but to protect the people of California and to set a precedent against this inappropriate behavior, if nothing else, and to protect the people, stop this program.

Thank you very much.

**SENATOR FLOREZ:** Thank you very much.

Thank you.

**MR. STACY CARLSEN:** Stacy Carlsen, Marin County agricultural commissioner. Thanks for the opportunity to speak to you.

Without regressing, but moving forward, I would suggest that in looking down into the future, that emphasis be placed on looking at risk assessment for pests, or pest, on the horizon that we'll likely face. And I think this would have to be a collaborative effort with National Academy of Science, USDA, CDFA. University of California/California State University system, in general, could contribute a lot to developing risk assessments just in a broad-brush way. I've been doing this work for over 30 years. Biological control of our pests that have been introduced has been a popular end product of control programs and as a result has been largely accepted.

One of the hurdles we have, though, is that introduction of biological control agents are largely restricted due to the science of potential impact to agricultural crops. Now, that's an important assessment to make. So, it's not just this arbitrary bring in biocontrol agents. But, we have an opportunity here to take a look at what agencies are doing this kind of work. The premier agency is USDA and various universities, and they need to have funding support to be able to identify what those insects are, or the activities, and do the foreign exploration so they can bring them in, work them through quarantine systems so they're eligible for use, or understand them better.

Certainly, a center for biological control, which has been discussed for many years, has been discussed to be housed or placed at the University of California at Davis. If you look at the history of IPM programs—virtually never got off the ground. There were several legislative acts that supported sustainability, agricultural pesticide reduction acts—I could go on—and never received appropriate funding to lift those off the ground. And then, when we have these problems, everybody relies on “that's the model we want to follow.”

But in fact, those models don't exist because we don't have the appropriate infrastructure to carry those activities out.

So, I would suggest strongly that those issues be readdressed and not left off the table in this discussion. Everybody wants results, but nobody wants to step up and identify how you would accomplish those. So, I recommend that you take a look at that center for biological control, the coordination and cooperation efforts that could be enhanced by international discussion on this topic, and then with the idea of making those resources available to take care of these problems when you have them.

So, thank you.

**SENATOR FLOREZ:** Great. Thank you.

**MS. TAMMY DAVIS:** Thanks for your patience, and I really appreciate this opportunity to be here and to speak. My name is Tammy Davis, and I work with an organic farm and nonprofit that researches biodiversity called the Regenerative Design Institute. I just wanted to speak for exactly what he was saying was the research and development that's happening: how can we get off of the track of the war against insects and learn how to operate in harmony with nature and support the diversity that nature supports?

We're learning to farm with a polyculture and many different crops that attract beneficial insects, and I believe that supporting a natural balance in our farming techniques will really eradicate programs, like LBAM eradication.

I would like to just say that, you know, we're really working hard. We don't want to be overhead sprayed against our will when we're here experimenting on how can we grow these important foods for the population, without being interrupted with chemical sprays or some of the methods that are being enforced on farmers.

Also, the farmers are so struggling already to make it financially. I really want to support organic farming, and so, I think that we just need to look at all the different ways that we're experimenting, that we can fund further these kinds of experiments. Also, just really look at what it is we're protecting: our food source, our food supply. And what is the big picture? We're protecting

our food supply by forcing farmers to spray poison on our land, and I think that's a big mistake.

So, I really appreciate your support and the testimony here today.

Thank you.

**MS. BARBARA DEUTSCH:** I'm Barbara Deutsch, and I'm very grateful I attended this hearing and heard all of these comments.

It alarms me to think of biological control, especially a center for it, considering when I hear that people are afraid that a moth, that there's no evidence ever harmed anything, might harm redwoods, and I think about how the redwoods have disappeared. And then I hear how the goal of this program is to make it possible to keep shipping products worldwide, but the reason that the moth is a danger is because of modern transportation. There are a lot of contradictions that it seems to me it would be good for us to look more closely at, including the language we use about insects. I would like to recommend to those who are working to resolve these contradictions that they read Edmund Russell's *War and Nature*, which carries on the work of Rachel Carson and shows how, since we have been able to get engines into the air, we have, more and more, viewed insects as enemies and enemies as insects.

One predator of insects, especially of caterpillars, that has not been mentioned today are songbirds. I garden for butterflies, and anyone who gardens for butterflies will tell you that the problem is you don't have caterpillars, because if you garden for butterflies, your garden is full of songbirds, and they have to have the caterpillars to form the eggshells and they have to have the caterpillars, many of them, to feed the young. And it may be, with the environmental destruction that our species is so good at, we're going to be grateful for caterpillars of almost any species if we do what Peter Steinhart has recommended we do. He said, "If we are intelligent tinkerers, the first thing we will do is to keep among us whatever species of songbirds are still present." I brought some photographs of songbirds in our apple tree, and I thought I would just let you look at them.

I wanted to make a recommendation, on no scientific basis, but on the basis of having spent a little time on a farm where horses were an essential part of the workforce when I was a girl. And I think farmers, if they are brought into the decision making, which it seems to me is the only way to do it right, would be open to the suggestion that caterpillars be encouraged and there be hedge rows; and they work with the project that Wes Jackson and Wendell Berry are advocating of the 50-year farm bill; and we develop, as food sources, perennial plants that are natural in California. Because when you have all your crops from Europe and other places, of course the associates of those plants are going to be here, and instead of managing and eradicating—James O. Luken is the one who said, “‘Invasive’ is not a scientific term, ‘pest’ is not a scientific term.” These are words that have psychological coloration.

If you change back from the ethic of eradication, that he says we went to without a discussion, to the ethic of conservation, then it seems to me you’ll be creating a center for biological diversity, which would protect us, a very new species compared to moths and butterflies which are over 100 million years in existence. It would protect us much better than the programs that are underway at the moment.

**SENATOR FLOREZ:** Thank you.

Anyone else?

**MS. YANNIK PHILLIPS:** Hello, Senator Florez. Thank you very much for holding this hearing. My name is Yannik Phillips. I’ve written my comment—I think probably rewritten it about five times, but great testimony today from everybody and the panelists.

Again, my name is Yannik Phillips. I’m a third generation Californian, and my grandparents farmed citrus in San Diego. So, I greatly appreciate Erin coming up today from the San Diego area and testifying.

In the fall of 2009, I began to work with California farmers and growers and business people after hearing concerns from those farmers on the LBAM program, not the moth. So together, in an effort to get sign-ons to a letter, which asked that the LBAM program quarantines be ended, the funding for the

program be cut, and the moth itself be reclassified—I wanted to read part—I’m not going to read the whole thing because I know it’s been a long meeting—but I wanted to read parts of it.

This is basically an excerpt of the Farmers Press Release: “Together, farmers, growers, nursery owners, plant wholesalers, produce distributors, restaurant owners, and business proprietors from around California have signed a letter asking that the light brown apple moth eradication program be ended, along with its quarantines, and that the classification of the moth be changed from a Class A (serious pest) to Class C (of minor concern).”

Farm Bureau member and conventional apple grower Dave Hale, from Sonoma County, says, “The current program accomplishes nothing except more paperwork for farmers.” Signatories from Sonoma Valley to the Yolo County, to the Monterey Bay area, to Fresno want the program ended because it wastes taxpayer dollars and its quarantines hurt local producers. The economic damage from LBAM has stemmed solely from these government mandated sanctions and not from the insect itself.

Peggy Da Silva, of Veritable Vegetables from San Francisco, the oldest distributor of organic produce in the United States, says that, “For more than 35 years, our company has supported farmers who approach pest problems in ecologically sound ways.” Many smaller, independent farmers have been hurt by regulations that do not respect the great skill farmers have in managing their farms, producing healthy crops, and contributing to our state’s economy.

The LBAM eradication program with its zero tolerance policy has meant that a single potential sighting of LBAM in a field or nursery can shut down an entire operation for weeks.

Former California Farm Bureau Federation president Doug Mosebar has said that, “Trading restrictions pose a particular burden for organic farmers and for small-scale farms.” And he’s absolutely right on that.

Almost 100 conventional and organic farms and nurseries, both large and small, have signed the letter, and an equal number of business supporters of the farmers have also signed on. I’m submitting for the record the two

separate blank letters mentioned. Originally, all the names of the farmers were going to be released to the CDFA and USDA, Secretary Kawamura and Vilsack, but after much concern and fear from the farmers that were signing on, the decision to keep their names confidential was chosen. But I did bring the signatures with me as proof. You're happy to go through it. It's the witness here, so a hundred farmers are here today on paper.

I find this really a tragedy that our farmers so clearly are scared of CDFA. I collected a lot of these signatures individually from farmers, excruciatingly, painfully slow, but I got to hear their story one by one. As a Californian, as somebody whose grandparents farmed, this is really so scandalous.

So, if I kind of understand this well, our tax dollars go to an agency that is supposed to be supportive of farmers, but it has become clear that farmers are terrified of this agency. And in addition, in the urban areas, CDFA, with a warrant, can cross over our private properties and force this program. This is just really truly scandalous. This should be an embarrassment to CDFA and to every Californian who knows these facts.

Since this press release, that was released on March 8th, more farmers and growers and business people have signed on, and a few who could not attend really wanted me to read their short statement.

We have Sonoma County Karen Van Kayne, agricultural lender/rancher/farmer. She says, "This LBAM issue is negatively impacting California's farmers' ability to obtain financing." She lost the selling of a property because of LBAM.

Napa County world-renowned French Laundry Restaurant: "Our entire restaurant group, which is the French Laundry, Bouchon, Bouchon Bakery, and ad hoc, support our farmers in an effort to reclassify LBAM and lift the quarantines."

Sonoma County Giorgetto(?) Seed Bank sells seeds nationwide, with the majority of the business occurring in California. They actually are based in Missouri and have moved one of their businesses in California because it's so

heavily supported: “We feel that the LBAM quarantines are hurting not only our California farmers but businesses like us and all taxpayers.”

A Farm Bureau member, quarantined apple grower, who would not give his name, just simply said, “The program doesn’t stop the pest, and this costs a lot of money.”

And we recently had Alice Waters from Chez Panisse sign on as well.

We will not stop collecting names until the program is ended. I would like to humbly suggest that if CDFA will not call off the LBAM program once and for all, that this committee, if possible, demand congressional members to hold a hearing. You know, after all the testimony today, it’s clear that there does need to be a shift on how insects are dealt with, and a paradigm shift is needed.

So, I thank you very much.

**SENATOR FLOREZ:** Thank you for submitting that. Any more public comment at this time?

**MR. GUTIERREZ:** My name is Andrew Gutierrez. I have just a very brief follow-up.

It’s obvious that the public’s against it. There is no scientific evidence that it really is a serious pest. It’s going to be a limited distribution. As I recall my first case of dealing with CDFA, they were trying to eradicate a thing called grapeleaf skeletonizer. This was back in 1976. The CDFA people were approaching the California Wine Advisory Board to seek their support to continue an eradication campaign. The map that they showed of all the places they had eradicated this particular pest were red dots on a map of California. It looked like the state of California had measles. What they were doing was not eradication. What they were doing was spot pest control, and it appears that the tactics that they finally have adopted for light brown apple moth is more of the same.

The science does not support what they’re trying to do. If they’re only doing control, that means the organism will probably achieve its maximum

geographic space, which will be determined by weather and by natural enemies.

I would urge the committee to stop the program.

**MS. MARY BETH BRANGAN:** My name is Mary Beth Brangan from the Ecological Options Network. I'm so blessed to be from beautiful west Marin. We're surrounded by organic farms, dairies, and ranches.

I brought several things here. I have a letter from our Bolinas Community Public Utility District that is addressed to the CDFA, and I won't read the whole thing but just one point that the Bolinas community—well, they say, first of all, that the draft Programmatic Environmental Impact Report is fatally limited in scope because, among other things, it doesn't adequately analyze the potential adverse effects of the light brown apple moth eradication program on nontarget species. We're all very aware of the need for a balance in our ecosystems. Caterpillars are food for the birds and the spiders. That's why they're really not a problem.

The Bolinas community remains adamantly opposed to aerial or ground spray application of any pesticides within this county to control the LBAM, and we repeat our position that there is substantial evidence that eradication of the species is neither feasible nor achievable, and now, of course, APHIS agrees with them.

They also copied this letter to the fellow water districts in Marin County and the Point Reyes National Seashore, who is a significant landholder in West Marin, asking them to join in opposition to the LBAM control program. So, they're asking that you could do everything in your power to prevent that program from ever being implemented.

I also have a letter from the board of supervisors of Marin to the officials at CDFA, and I'll just mention one of the points which hasn't really come up here yet, and that is that the public comment period to respond to the draft PEIR for the LBAM closed on September 28, 2009. However, comments on the final PEIR released in February 2010 were restricted to only public agencies that commented on the draft PEIR, with no provision for comments by the

general public. We believe that comments from all members of the public should not be excluded from consideration in such an important public policy issue as the control and eradication of LBAM from California, and they recommended that the public comment period be extended for 30 days and that all comments received be reviewed and responded to before the final PEIR is certified. I don't know if there's anything that's possible now that it is.

I have, also, a resolution from the Bolinas Community Center opposing the California Department of Food and Agriculture's aerial and ground application program to control the light brown apple moth. I won't read that whole thing, but it's making all of the points that have been made here today.

But I do want to read a letter in behalf of folks from the Don't Spray California group who couldn't be here today:

"Dear Senator Florez and members of the Senate Food and Agriculture Committee: We are unfortunately unable to attend today's hearing, as most of the members of Don't Spray California are disabled by chemical and injuries. It is difficult for us to access many public meetings.

"There are far too many errors in CDFA's final Programmatic EIR to address in a brief public comment, including repetitive pictures of alleged damage. In one case, the same exact photo three times.

"CDFA has set aside no public comment period to respond to how commenters have been misquoted and misrepresented in CDFA's responses," which is, I think, one of the points that the board of supervisors was making as well.

"It is especially disturbing that CDFA refused to respond to comments made at the hearing of this committee on August 25, 2009, which was specifically called to evaluate the sufficiency and factualness of the LBAM EIR.

"In the FPEIR, CDFA responded that the transcript, which was submitted by legal counsel for Santa Cruz County, was disregarded because it does (quote) 'not constitute comments on the EIR itself' (end quote), even though Senator Florez clearly stated that the intention of the hearing was to build an

official record to be submitted to the CDFA's process and that this committee has oversight over CDFA.

"We are outraged that Secretary Kawamura certified the FPEIR yesterday and a Notice of Determination was posted preempting this hearing.

"Even though the FPEIR document that has been certified continues to refer to the LBAM program as an eradication program, in the CEQA findings that preface Secretary Kawamura's certification letter, CDFA states that the agency is now implementing a (quote) 'systematic statewide program' to control and suppress, and in some cases, eradicate LBAM.

"Since LBAM continues to be classified as an actionable pest, which requires quarantines, the implication is that this program will likely become another permanent program similar to the Gypsy Moth Slow The Spread Program that has been poisoning states back East for over a decade, following many decades of failed eradication programs.

"Such a gypsy moth program visited California a year ago when CDFA bullied elders and disabled people in the Ojai Valley, injuring several with forced pesticide applications. Actions with the FPEIR described says, 'potentially necessary in the LBAM program as well.'"

And I have to say—these are my own words—this is what all our communities are really concerned about, Senator Florez. We're not reassured by no aerial spraying because they can come after us with the high-pressured spray hoses from a truck or a backpack.

"While many have been most concerned about the aerial pesticide applications of the LBAM program, please understand that the so-called pheromone pesticides are specifically designed to be constantly present in the environment regardless of the application method. Both the industry and USDA described this process as 'saturating areas with the chemicals.' This constitutes long-term chronic exposure.

"The acute tests that were done on the synthetic LBAM pheromone resulted in alarming effects on the organs and immune systems of test

animals. Another synthetic pheromone—disparlure—for gypsy moths has been shown to persist in the human body for a least 17 years.

“More information about this and other aspects of this program can be found on our website at [dontspraycalifornia.org](http://dontspraycalifornia.org). These are serious concerns which CDFA’s risk assessment approach regards is negligible and acceptable risk. Those of us who have been injured by these and other pesticides regard such callous determinations that some segments of the population are expendable as violations of our human rights and as threats to our lives.

“We ask that you step in and exert your power as a committee with oversight over CDFA and prevent this agency from moving forward with this fraudulent and toxic program.

“Thank you.”

And I have to say that all of this discussion makes me so much more compassionate to the farm workers’ situation, which is hideous, just hideous, and totally unacceptable in a supposedly civilized society.

Thank you.

**SENATOR FLOREZ:** Thank you.

Any other public comment?

It’s now nearing 5 p.m. I do want to thank everyone for coming. I’d like to say, give us an opportunity to digest all of the good recommendations that have been made here. We probably will have another hearing just to close on this issue, to get some closure. We may possibly have legislation that gets to some of the things that were mentioned here. I think we want to make sure that when we all leave this place—and that means some of us who are leaving, and the Governor and others—that we try to have a closure on this as an issue so that we’re not redoing some of this. I’m very sensitive to the fact that one pesticide was mentioned today, and I really appreciate people bringing that up as well.

So, we will take this very good hearing and we will take all information. We should have a transcript of this in the next two or three weeks. Let us go

through this, and we'll write a very detailed letter to CDFA and try to get some follow-up in terms of what they need to do to close this issue for everyone.

And I do appreciate everyone traveling here and giving us your testimony. I know we had the hearing in August, and I'm sure for those of you that were here in August and gave testimony, it's almost as though we should have just done what we said in August because we had to go through this entire process to get the same, if you will, issue to the forefront, which is—you know, eradication is really not the issue here at all. It's always been about finding other ways to deal with something that's been here for a very, very long time. Probably still will be here for a very long time. We're trying to figure out what's the best means to deal with that and if we need to deal with it at all.

So, I think that's an issue that we will take under advisement, and don't be surprised if you see some legislation before the end of the session.

So, I want to adjourn and thank everyone for coming.

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