

THE COMPOUNDING EFFECT OF GOVERNMENT IMPOSED COST ON FARMING CITRUS IN CALIFORNIA CREATE AN UNHEALTHY ECONOMIC ENVIRONMENT

The California citrus industry is not alone; along with many of our brethren representing other agricultural commodities we have been expressing major concerns to two governors for almost a decade about the rising costs of doing business in this state. We have repeatedly stressed that *“Our costs are fixed locally while our prices are determined globally and the margin between the two is almost nonexistent.”*

It is unfortunate that this universally recognized principle of Ag economics has not resonated with policy makers. California Citrus Mutual, on behalf of the billion dollar plus citrus industry, has compiled detailed studies from three major resources analyzing our competitive economic environment. These analysis are a compilation of work developed by Cal Poly San Luis Obispo, Arizona State University, the International Trade Commission, and California Citrus Mutual.

Much of my remarks this morning will be taken directly from these reports. Complete copies of which are available from California Citrus Mutual.

Agriculture is big business in California. In 2008, according to USDA-NASS, the total sales value of California’s agricultural products was \$36.4 billion. Citrus, when all varieties are combined, represents over \$1.2 billion of that total. California is the largest agricultural producing state in the nation and one of the top ten producing regions in the world.

California is also one of the most desirable places in the country to live, so it should be no surprise that there is tremendous competition for space, water, air and environmental resources. This competition has developed into highly charged political debates driven in part by activist, opposed to agriculture, conspiring to put agriculture in a negative light and calling for increased government regulation on several fronts. This myriad of new rules and the associated cost have a dramatic impact on a core segment of the California economy. This is why decision makers need to have accurate information and must understand the consequences of their decisions.

To try and take ideology and emotion out of the equation and provide an accurate quantitative analysis of the impact legislation and subsequent regulations could have on the California citrus industry and the California's economy, Citrus Mutual first undertook in 2002 to define the public policy issues and market developments that may have a material impact on our citrus industry. We wanted to determine the impact of pending legislation and market developments on the California citrus economy and trace these impacts through the Citrus economy to the California economy more generally. Our objective was to condense huge amounts of empirical data into an impact statement that could be communicated and understood by the public and their government representatives. We contracted with Timothy Richards, Ph.D. and Paul Patterson, Ph.D. at Arizona State University to do the study, which was completed in December of 2002.

In 2006 the pressure of the regulatory burden was becoming a growing concern for California producers. At that time a second project was undertaken to go beyond quantifying the total cost of regulation on the state's agricultural producers and to conduct a case study comparing those costs with commercial-scale operations in other states where citrus is produced.

This study done by the California Institute for the Study of Speciality Crops at Cal Poly San Luis Obispo. The project was directed by Lynn Hamilton. This case study analyzed two important specialty crops: citrus and lettuce. The study provided compelling evidence that the regulatory pressure is much more significant in the San Joaquin Valley.

In 2008 things looked much different than in 2002. The California economy was faltering. The traditional powerhouses such as homebuilding, manufacturing and the high-tech industries were all in decline. Agriculture however, remained a significant source of value added benefit to the state economy. Therefore we felt, and still do feel, that it is important to subject any policy that may undermine the competitiveness and sustainability of agriculture to careful, quantitative scrutiny. Particularly, at a time of rapidly rising unemployment, when the value of each job lost in a value-producing industry such as citrus is magnified. Because so much had changed since the first analysis was done in 2002 Citrus Mutual in late 2008 asked Dr. Richards to update the 2002 impact analysis using the current economic environment. This study was completed in January of 2009 and represents the most current data available.

When all sources are included the California citrus industry represents \$1.8 billion of direct economic output and \$3.0 billion when all upstream suppliers and downstream retailers are included, employing a total of over 13,500 workers directly, and another 12,500 workers in support and affiliated industries. Yet citrus growers face an economic and regulatory environment that is less than receptive to growing and sustaining this linchpin of the California agricultural economy. California lawmakers, and the public in general need to understand the aggregate – economy-wide – effects of policy issues facing the California agriculture industry.

The 2009 Impact analysis concludes that policies, regulations or price changes that increase the cost of producing citrus will cause the quantity demanded to fall, and total cash receipts to decline. The multiplier effect magnifies the reduction in citrus cash receipts as lower input purchases and retail sales ripple throughout the California economy.

Compliance with State air quality, water quality, pesticide, labor, and capital expenditure regulations costs citrus growers millions of dollars in added cost per year. The California legislature passed Senate Bill 700 in 2003, which defined agricultural as a key source of particulate pollution.

In December 2008, the California Air Resources Board instituted the most strict air-quality regulations in the United States.

We understand that regulations are intended to have a positive impact on society in terms of cleaner air and water, as well as increased worker and public health and safety. However, they do not come without imposing multiple costs. Growers must comply with a tangled web of rules at the local, state and federal level. There are also regional differences recognized within the California environmental regulations, resulting in regulatory pressure being unevenly applied throughout the state.

While a relatively new driver - increased regulation has moved right up the list and is now included as one the 20 major factors affecting the future of California, but one that will have an increasingly negative impact on the competitiveness of the industry. No less than 25 separate laws at the state and federal levels govern the resource base employed by agriculture. Findings from a 2005 survey of nearly 1,300 specialty crop producers show that regulatory costs add nearly \$1 billion to California growers' costs.

There is very little control over how fees are set or how much they can increase. Increases in water quality permits and monitoring fees, air quality permits, and chemical use permits can range into the thousands of dollars.

Philip Lo Bue is a citrus grower and operates a medium sized family owned citrus packinghouse that is going into its third generation. Lo Bue Brothers employs around 120 people many of whom had parents or grandparents who worked for the Lo Bues in Lindsay. Philip shared with me something that happened to his family's operation. In 2002 Lo Bue Brothers was sent an invoice from the State Water Resources Control Board. The invoice was for an annual waste discharge fee. The amount of the invoice was \$400. In 2007 LoBue received the invoice for the annual renewal fee and it was \$4,676. Almost a ten fold increase from the 2002 fee. Nothing in Lo Bue's operation had changed. There had been no upgrades or capital improvements to the utility servicing his operation. Everything was exactly as it was in 2002. So surely there must be a mistake or an explanation. There was neither and there was no recourse but to pay the higher fee. This is a scenario that is repeated hundreds if not thousands of times each year.

The federal Clean Water Act mandates states to control water quality. The California Water Code gives Regional Water Quality Control Boards the authority to regulate discharges of waste that could impact the waters of the state, through "Waste Discharge Requirements."

Since 2004, when the State Water Quality Control Board adopted a new policy regulating non point source pollution, landowners and agricultural producers have become subject to increased regulation to control runoff.

In California there are nine regional water boards. Region 5 extends from the Oregon border to the north end of Ventura County between the Coastal Range and the Sierra Nevada. Most of California's citrus production can be found in Tulare, Kern and Fresno Counties, which are within Region 5.

In 2005 the Region adopted a Conditional Waiver of Waste Discharge for irrigated land. The Waiver requires Coalition Groups to develop a monitoring program to assess the sources of impacts of waste discharges from lands that are irrigated. A Coalition Group is a group established to represent individual dischargers that discharge waste to waters of the state.

Coalition Groups can be organized on a geographic basis or by other factors in common such as irrigation districts.

Since each Coalition Group is a separate entity with the power to administer the program to its own discretion, as long as it adheres to the guidelines of the Region's requirements, fees can vary among Coalitions.

In the case that the Coalition is a water district, fees may be collected through an increase in water prices. In some Coalitions a fee of \$1-\$2 per acre may be applied as well as a fee to join of approximately \$100. Furthermore, fees have also been associated with an increase of rural property taxes. Whatever route a Coalition chooses to take, a fee is applied to cover the costs of monitoring. The Cal Poly study determined the grower compliance cost to be \$1,300 annually. A Tulare County grower who participated in the study estimated his time spent in attending meetings and educational programs with respect to the coalition and staying current with water quality regulations to amount to \$2,860. His fees were \$600 and the permits and paperwork to stay in compliance took about 20 hours annually or another \$700. So, individual costs can be much higher.

Texas is the state whose citrus industry most closely resembles California's and with which we compete directly in fresh market. The Texas State Soil and Water Conservation Board is responsible for implementing water quality management plans. A site-specific plan is developed through and approved by soil and water conservation districts for agricultural lands. The plan includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof. The purpose of water quality management plans is to achieve a level of pollution prevention or abatement by consultation with local soil and water conservation districts, to be consistent with state water quality standards.

The water quality management plan is a **voluntary incentive program** that uses special grant funding from the federal Clean Water Act to carry out special educational programs and further financial assistance for implementing management measures.

The Texas State Soil and Water Conservation Board operates much like California's system in the sense that the state of Texas is divided into five regional districts. To obtain a WQMP the individual grower contacts the district office and obtains the necessary information to start the development process.

The grower would then develop a plan. Once this is done, a WQMP is certified and the implementation takes place on the grower's land.

It is important to point out that there is no fee associated with developing a water quality management plan in Texas. The cost to the citrus grower in Texas is zero compared to the California grower's annual cost of \$1,300 or more.

Prior to 2003, agricultural operations in California were exempt from the federal Clean Air Act requirements. However, on September 22, 2003, Governor Gray Davis signed into law Senate Bill 700 which put new regulations on agricultural operations with respect to air quality. The bill contained six main provisions. These policies establish the growers' obligations to reduce fugitive dust emissions as well as particulate matter, commonly referred to as PM10, to improve air quality within air districts. Sources include open fields, roadways, feedlots and storage piles.

California is comprised of 35 air districts. Requirements for air quality compliance vary greatly, depending on the pollution levels inherent in a particular region. Specifically, the San Joaquin Valley Unified Air Pollution Control District, where the study was done, is subject to some of the most stringent regulations in the state with respect to air quality, as it is a non-attainment area for three of the five pollutants on EPA's list. It requires growers to comply with Conservation Management Practices (CMPs) to limit the fugitive dust and PM10 emissions. An owner/operator must select one CMP from the list for each of the applicable categories for each agricultural parcel of an agricultural operation site.

Management practices primarily deal with practices that help to reduce dust and other particulate matter, such as watering roads, practicing minimum tillage and planting cover crops. Growers must apply for a CMP permit, and the fee is based on the size of the operation.

The initial fees are as follows:

- 500 acres or less: \$120
- 501 acres to 1,999 acres: \$350
- 2,000 acres or greater: \$550

The paperwork required takes about 20 hours annually to complete, adding another \$700 to the compliance cost.

These costs for a California citrus grower compare with zero for a Texas citrus grower. None of the citrus producing counties in Texas are in non-attainment for any of the regulated pollutants, so air quality regulations do not apply.

The EPA regulates pesticides. The EPA may require as many as 90 to 100 specific tests, and manufacturer's cost of completing these tests can be up to \$10 million. States may place more restrictive requirements on pesticides than EPA. Both the EPA and the state must register a pesticide before distribution.

Most states have registration requirements based upon the prior testing and approval by the U.S. EPA. Once the pesticide manufacturer has provided documentation of EPA's registration, nearly all states register the material for use within their borders, following a relatively simple application process and fee payment. However, California has a separate review process, handled by the California Department of Pesticide Regulation (DPR). Pesticide manufacturers must provide additional data to the DPR in order to pass scientific, legal and administrative requirements in order to be granted a license to sell and use the product in California. A recent case study found that for several new pesticides under review in California, registrations were delayed for several years after the U.S. EPA had provided either conditional or full approval (Hurley et al., 2006). The new pesticides were even considered safer, perhaps more effective alternatives to older chemicals. This finding would indicate that other states might be able to access safer, more effective products several years prior to California growers. In addition to the delays, industry officials note that it costs companies an additional \$6 to \$8 million to register their products in California, over and above the tens of millions spent for federal registration. California assesses higher fees than other states for pesticide registration, and also levies a mill tax on all pesticides sold.

As of July 2004, a pesticide registration or registration renewal costs \$750 per year, up from \$200 prior to this date. Label amendments, which formerly had been free of charge, are now assessed a fee. A mill assessment is levied quarterly on wholesale pesticide sales, plus an additional fee on agricultural and dual-use pesticides.

The Texas Department of Agriculture has the authority to register pesticides in the state. A \$420 fee is required for a two-year product registration, and the applicant must submit the current product label that is affixed to the container that includes the EPA number, establishment number and net contents; a Materials Safety Data Sheet; the EPA Stamped "Accepted" label, the letter containing EPA comments page (if

applicable), approving the deviations to the label and any other EPA correspondence. No mill tax is assessed on pesticides sold in Texas.

California also imposes use restrictions.

Not only do the pesticides undergo a more stringent and expensive review in California, but those who intend to apply or advise the application of restricted-use materials have a longer, more expensive certification and continuing education process than in other states.

Again, the Department of Pesticide Regulation, under Cal EPA, administers the certification and licensing process. Owners of private firms who plan to use restricted-use pesticides on their own property can apply for a Private Applicator Certificate, which requires the passage of an exam that is administered through the County Agriculture Commissioner's office. There is no cost for the examination or certification, but the study manual costs \$35. To renew the Private Applicator Certificate, six hours of continuing education over the three years of the valid certification is required, or the applicant must re-take and pass the examination before the current certificate expires. All certified private applicators must maintain records on their applications of restricted materials for one year.

An Agricultural Pest Control Advisor's (PCA) license is required of anyone who advises the use of restricted materials, and a Qualified Applicator's license is required of anyone planning to apply restricted materials for hire. Many growers in California use PCAs to advise their pest control needs.

To earn a PCA license, one must first either have completed a Bachelor's degree in agricultural science, biological science or pest management, or have completed 60 semester units of college-level curriculum, plus 24 months of experience as an assistant to a PCA.

Both options include core course requirements of 39 semester units. An initial application fee of \$50 is required, and college transcripts must be submitted. The applicant must pass a Laws and Regulations exam, and to maintain the license, the PCA must attend 40 hours of DPR-approved continuing education classes every two years. The PCA must also register in his or her home county where the work is conducted, which costs \$10 per year, plus \$5 per year for each additional county in which the PCA conducts business.

Both private applicators and PCAs are required to provide a Notice of Intent to the County Agricultural Commissioner at least 24 hours before the application of restricted materials. Private applicators and PCAs must report their applications monthly to the County Agricultural Commissioner, who then reports the data to the Department of Pesticide Regulation. The reports must include the data and location where the application was made, as well as the type and amount of pesticides used. The type of crop must be reported, as well. Property owners or operators who intend to use restricted chemicals on crops grown on their land must receive an annual permit from the County Agricultural Commissioner. A Tulare county citrus producer who maintains a PCA license estimates that with fees, cost of travel to programs, and his time the cost to maintain his license is \$3,500 annually.

California producers gave higher rankings to non-cash compliance costs than cash compliance costs (such as fees, permits, etc.) in terms of having a negative impact on their operations. Producers reported a 40% increase in their management time in an effort to keep up with regulations; and now spend on average just over 10% of their time on regulatory compliance, up from 7.31% in 1999.

The Texas Department of Agriculture (TDA) administers pesticide use certifications for restricted-use and state-limited use materials. Like California, Texas distinguishes between those who plan to use restricted materials on their own agricultural operations and those who custom apply or recommend pesticide use for hire. Private applicators must attend a private applicator training program, pass the private applicator exam, and purchase a license for \$60, which is valid for five years. The applicator must obtain 15 hours of continuing education credit over the five years to renew their license, or pass an exam, the cost of which is \$50 per attempt. Additionally, applicators are to keep records of pesticide applications for two years.

Applicants for a commercial applicator's license must pass the TDA general examination, the laws and regulations examination, and a category exam in one of eight approved subject areas. There is no fee for the general or laws and regulations exam, but a \$24 fee is charged for each category and sub-category exam. The applicant must provide certification of financial responsibility and the applicant must not have been convicted of a felony involving moral turpitude. The non-refundable application fee is \$180 and an Applicator Business Registration must also be submitted.

Commercial applicators must renew annually and obtain five continuing education credits each year, and they are also required to have insurance and register their pesticide equipment. Texas Department of Agriculture has no statutory requirements with respect to pest control advisor certification or licensure. Only those who are actually applying or supervising the application of restricted materials are required to have a license.

Two other regulated categories that put California citrus growers at a competitive disadvantage are workers compensation and minimum wage. Workers' compensation is very costly to California agribusinesses. For a grower with 75 employees, maintaining compliance with workers' compensation regulations costs \$95.60 per acre. California, though it has undergone reform still has some of the highest costs in the country, and employers are required to carry some form of workers' compensation insurance. Texas, the comparison state for citrus, has no such regulation for employers – they can enroll in state workers' comp, they can self-insure, or they can choose to take on the full liability if a worker is injured on the job and sues. Texas uses the Federal minimum wage rate while California imposes a California minimum wage which is among the highest in the country.

One hidden cost of regulation is the time and expense necessary to learn about the regulations and what is required for compliance. California growers must follow no less than 25 different laws at the state and federal levels. However, there is no clearinghouse for a grower to learn about the variety of regulations that affect his or her operation. This is due in large part to wide variety of independent agencies that govern various regulatory areas in California. Both Texas and Arizona have very helpful and user-friendly regulatory pages on their respective Department of Agriculture websites where growers can learn about the regulations affecting their operations. No such clearinghouse is readily available from a government agency in California.

These differences in the regulatory environment become evident when the 2006 case study analysis is presented. **The California citrus grower bears a regulatory cost burden of \$356.20 per acre, as compared with the Texas grower, who estimated regulatory costs to add \$29.63 per acre. In 2009 the cost for the California citrus exceeded \$400 per acres.**

The primary differences in regulatory costs in California were with respect to air quality regulations; totaling \$208.22 per acre. That was following by workers' compensation, which totaled \$95.60 per acre.

If one only considers the cultural costs of production, the California grower's regulatory costs add 17.8% to his costs of production.

In recent years citrus growers who have purchased land state that their decisions to buy have been decided primarily on development trends in the nearby town - and rather than moving away from town, growers have invested in land closer to the growth patterns. The hedge against future regulatory cost increases is to be well positioned to sell his land for development. This is something that would not have been a consideration 10 or 12 years ago, when the regulatory burden was much lower.

That's the best case scenario, because citrus growers who want to continue growing citrus are pretty much locked into California, if they want to stay in the U.S.

That is not the case for other producers. The father of U.S. Congressman in Tulare County has picked up and moved his dairy operation to the Midwest. A former CA Deputy Secretary of Agriculture has moved the majority of his cheese manufacturing operation to Texas. And the brother of our CCM chairman is in the process of selling out his interest in the family citrus operation and buy farmland in Kansas. I don't know that many people, but I know three producers who have moved out of California. How many do you know? And how many more will follow.

There is a lot of emphases currently being placed on preserving the small family farm and on buying local. The California regulatory environment is promoting just the opposite. Family farmers who still make up the majority of farmers in California cannot survive under the compounded regulatory burden in this state.

The regulatory burden is leading to consolidation into large corporate farms or even worse land is going out of production as it is sold for development.

I hate to suggest more regulation, but it's time to regulate the regulators. In California there is way too much duplication, too much overlap between regulatory agencies and there is no control over how fees are set.

Agencies go through the motions of a process, but in reality they create a budget that is a wish list and set fees to satisfy the budget. Hence an never ending cycle of fee increases and more reporting.

There must oversight to eliminate the duplication and controls placed on how agencies set fees and determine the reporting , documentation and onerous compliance requirements that they place on the regulated. And most importantly the economic cost to the state of losing one of California's last remaining viable industries must be weighed against the benefit of imposing more regulation.