

# COUNTY BAN ON THE PLANTING OF GENETICALLY-ENGINEERED CROPS

## BACKGROUND ON LEGAL AUTHORITY

IN MARCH 2004, Mendocino County citizens approved Measure H, a ballot initiative to ban the growing of genetically-engineered (GE) organisms in the county, including plants, seeds, animals and any other living entities—the first-ever county-wide approved initiative of its kind. Mendocino County passed this initiative in an effort to protect the county’s agricultural industry, environment, economy, and private property from contamination by genetically modified organisms.

In the absence of a strong regulatory framework for GE foods and crops on the state and federal level, (specifically the inadequate health, safety, environmental, and economic impact reviews), counties within California have the right to establish laws to protect its citizens. Specifically:

- 1) The state of California does not have laws or regulations governing GE plants or animals.
- 2) The U.S. Supreme Court has acknowledged the states’ interest in protecting its citizens from environmental hazards even where the nature and extent of any potential environmental damage has not been conclusively established.
- 3) The federal government does not have specific mandatory environmental or human safety testing requirements for any GE crops, instead allowing companies to determine what tests are performed and how they are conducted; does not require pre-market review or labeling of GE products; and rarely requires any monitoring of GE crops for risks after they are commercialized.
- 4) Counties rights of self-governance and protection of health, safety and well-being are guaranteed under various sections of the United States and California Constitutions.

### FEDERAL REGULATION ON GENETICALLY-ENGINEERED ORGANISMS

A detailed review of the U.S. regulatory framework reveals a system that is inadequate to protect human health and the environment from the potential hazards of genetically-engineered organisms. In summary, federal regulation is as follows:

- ❖ ***U.S. Food and Drug Administration (FDA):*** Oversees the introduction of genetically-engineered foods under a 1992 policy which considers GE foods not significantly different than conventional foods and "generally regarded as safe" (GRAS) and therefore not subject to mandatory review, safety testing or food labeling laws. The FDA policy calls for voluntary consultation, the agency simply asks industry to submit new GE foods to a cursory review process. There are no mandatory testing guidelines or regulations: as such, in 2000, the U.S. District Court in Washington, DC found that the FDA oversight of GE foods constitutes a policy, not a regulation, and therefore is non-binding. The agency also has little experience assessing environment risk, raising concerns that it will overlook important environmental harm.

- ❖ *U.S. Department of Agriculture (USDA):* Reviews GE crops to determine if they are "plant pests." The agency does not look at human health or economic impacts of GE crops, and its environmental assessments have been criticized by the National Academy of Sciences for lack of rigor (National Research Council, 2002). USDA issues field test permits for pharmaceutical crops; and the current regulation for pharmaceutical crops is undergoing review. GE crops that are not considered plant pests are deregulated, and thus the agency cannot require further monitoring for long term environmental harm or set restrictions on the use of the GE crop.
- ❖ *U.S. Environmental Protection Agency (EPA):* Is responsible for human health and environmental safety of pesticidal genes and proteins in GE crops. EPA sets tolerance levels for chemical pesticides but has so far exempted all pesticide-producing GE products, such as Bt crops, from tolerance requirements. EPA also sets tolerance levels for herbicides used on herbicide-tolerant (e.g. Roundup Ready) crops. EPA has developed no formal safety testing guidelines for GE crops, relying instead on ad hoc review and guidelines developed for chemical pesticides and microorganisms.

## STATE REGULATION ON GENETICALLY-ENGINEERED ORGANISMS

The state of California has no laws or regulations governing GE organisms. California agencies that might be responsible for regulating these organisms—the California Department of Food and Agriculture (CDFA) and California Environmental Protection Agency (Cal EPA)—have not done so.

In 2000, the state established a Food Biotechnology Task Force (Food and Agriculture Code Section 491-492), which met only once before disbanding. According to an issue brief by the Senate Office of Research (2003), the Task Force "produced two published products, neither of which explicitly addressed the issue of whether more state oversight and monitoring of biotechnology is advisable." The SOR also concluded that "with few exceptions, states rely solely upon the federal government for regulation of biotechnology products." Senate Resolution 34 (January 2002) found that "state agencies have virtually no resources allocated to evaluating any potential adverse effects of biotechnology on the environment, public health or consumers."

## LEGAL LEGITIMACY OF LOCAL CONCERN

Counties have a legal right to regulate the use of genetically-engineered organisms in their own counties according to (at a minimum) the following legal bodies:

- ❖ *California Constitution:*

Article I, Section 1: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Article II, Section 1: "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require."

Article XI, Section 7: A county may "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

❖ *California Supreme Court:*

The California Supreme Court has interpreted the California Constitution provision (noted above) to mean that the County's power is as extensive as that of the state Legislature itself unless preempted by state law.

❖ *U.S. Supreme Court:*

The U.S. Supreme Court has acknowledged the states' interest in protecting its citizens from environmental hazards even where the nature and extent of any potential environmental damage has not been conclusively established. The Supreme Court found that a state has "a legitimate interest in guarding against imperfectly understood environmental risks, despite the possibility that they may ultimately prove to be negligible."

In approving Measure H, the voters of Mendocino County acted to protect themselves from the consequences of the production and propagation of untested and largely unregulated genetically-engineered organisms. They did this rather than wait until potentially irreversible environmental damage occurred, until the scientific community thoroughly assessed the dangers of genetic engineering, and until the state or federal government addressed growing concerns about their inadequate regulatory procedures.



This information presented by a coalition of local elected officials, businesses, and environmental, public health and agricultural organizations including:

Frank Egger (Mayor, Fairfax) ❖ Eric Larson (Mayor, Ukiah) ❖ Richard Shoemaker (Mendocino County Supervisor)  
John Woolley (Humboldt County Supervisor) ❖ David Colfax (Mendocino County Supervisor)  
Betty Winholtz (Morro Bay City Council) ❖ Frey Vineyards ❖ Straus Creamery ❖ Paul Dolan ❖ The Apple Farm  
California Certified Organic Farmers ❖ CA Sustainable Agriculture Working Group ❖ Center for Food Safety  
Community Alliance with Family Farmers ❖ Ecological Farming Association ❖ Environment California  
Organic Consumers Association ❖ Organic Farming Research Foundation ❖ Public Citizen