



Center for Food Safety
Nell Newman Foundation
Narrative Report
June 2013

The Center for Food Safety (CFS) is extremely grateful to the Nell Newman Foundation for its support and partnership. This support has allowed us to continue to battle against genetically engineered (GE) foods and to make outstanding progress in our fight to promote a sustainable food and farming system in California and nationally.

With the Nell Newman Foundation's support, CFS has effectively used legal, policy, and grassroots initiatives to address the following issues.

Preventing New Pesticide-Promoting GE Crops Resistant to 2,4-D and Dicamba

Predictably, the exponential increase in the use of Monsanto's Roundup Ready crops has created "superweeds"—unwanted weeds that are resistant to the herbicide. Contrary to company claims that these crops reduce pesticide use, by 2011, farms planting Roundup-resistant crops were using 24%-26% more herbicides than those that used non-GMO seeds¹. In response, Monsanto and other agrochemical companies have developed a new set of herbicide-resistant crops—soy, corn, and cotton that are resistant to the chemicals 2,4-D and dicamba. As we have seen with crops resistant to Roundup, the 2,4-D and dicamba-resistant crops will result in a toxic treadmill of increased pollution in our croplands, food, water systems, and air. Opposing this new generation of herbicide-resistant crops continues to be a major goal for the CFS team.

CFS recently won a major victory in our effort to prevent the approval of the 2,4-D and dicamba-resistant crops. On May 10, 2013, the U.S. Department of Agriculture (USDA) announced that it is delaying approval of the crops until a full environmental impact statement (EIS) is completed. USDA's decision is a direct reflection of CFS's successful past litigation. CFS's lawsuits forced an EIS to be conducted on both Roundup Ready sugar beets and Roundup Ready alfalfa and many sources credit CFS's legal pressure for



CFS played a major role in USDA's decision to conduct an EIS on Monsanto and Dow's 2,4-D and dicamba-resistant crops

¹ Philpott, T. (2012, October 3). How GMOs Unleashed a Pesticide Gusher. *Mother Jones*.

USDA’s decision to perform an EIS on the 2,4-D and dicamba-resistant crops—therefore delaying their approval until at least 2015.²

CFS was also instrumental in generating public outcry over the possible approval of the 2,4-D and dicamba-resistant crops. In April and May 2012, CFS and its allies (including Pesticide Action Network, Food and Water Watch, and Organic Consumers Association) garnered more than 370,000 comments to USDA in opposition to the approval of 2,4-D-resistant corn. Similarly, CFS launched major grassroots campaigns to reject 2,4-D-resistant soy and Monsanto’s dicamba-tolerant soy.

Preventing GE Canola in Oregon

CFS has worked extensively on preventing the planting of canola in Oregon’s Willamette Valley, the heart of organic and specialty seed growing. Canola is an industrial crop that is incompatible with other *brassica* crops; it can cross-pollinate with them, causing transgenic contamination, it creates resistant “superweeds” by cross-pollinating with wild mustards, and it carries significant pests and diseases. As a consequence, since 2005, Oregon has banned canola in several areas of the state, including the important Willamette Valley where there is a critical mass of family farmers growing organic vegetables and specialty seeds.

However, in August 2012, the Oregon Department of Agriculture (ODA) issued a temporary rule that would have allowed for the first time, the planting of canola. CFS, on behalf of its member farmers, immediately filed legal action to stop the new rule and keep canola out of the Valley. In September 2012, the Oregon Court of Appeals granted CFS’s motion, halting the temporary rule.



Red cabbage is a brassica crop threatened by GE canola in Oregon’s Willamette Valley

ODA did not give up, instead it proposed a new permanent rule that would allow canola in the Valley. The agency held two comment periods and two public meetings in November 2012 and January 2013. During that time, CFS spearheaded a coalition to engage with the agency, testify at the public meetings, provide substantial written legal and scientific feedback, and support legislative efforts to override the agency.

Finally, in February 2013, ODA again approved a new rule that would allow for some canola planting in the valley, albeit much less than what it proposed in August 2012 (2,500 acres vs. 1.7 million acres). Concluding the agency had once again acted unlawfully, CFS filed suit against ODA

² Philpott, T. (2013, May 11). USDA Sticks It to Monsanto and Dow—at Least Temporarily. *Mother Jones*.

with the Oregon Court of Appeals on April 5, 2013 on behalf of member farmers and allied partners.

Halting GE Crops in National Wildlife Refuges

CFS has been tremendously successful in halting the planting of GE crops in national wildlife refuges across the United States—litigating on this issue since 2005. As a result of CFS’s legal victories, the planting of GE crops has been halted in hundreds of national wildlife refuges. Although CFS has petitioned the Department of Interior to halt this practice nationwide, to date, the agency has not complied. As such, CFS is continuing its lawsuits region-by-region until this practice is stopped nationwide.

CFS celebrated its most recent victory on this issue in November 2012. U.S. District Judge James Boasberg ordered the U.S. Fish and Wildlife Service (FWS) to halt the planting of GE crops in any of its cooperative-farming agreements throughout the ten-state Southeast Region until FWS lawfully complies with the National Environmental Policy Act and Wildlife Refuge Act.

Stopping Approval of Genetically Engineered Fish

While CFS has been able to prevent the approval of GE salmon for more than ten years, the U.S. Food and Drug Administration (FDA) is currently debating the approval of this first-ever GE animal. Since 2001, CFS has been active in filing petitions with federal agencies on this topic. To date, CFS and its allies have garnered more than 1.8 million comments to FDA urging the agency not to approve this GE fish. Due to the deluge of comments, the public comment period on this topic was extended an additional two months.

In addition to encouraging public comments, CFS submitted detailed legal and scientific comments to FDA in opposition to the approval of GE salmon. These legal comments included internal documents CFS garnered through the Freedom of Information Act that severely undercut the



CFS has prevented the approval of GE salmon for over ten years

lawfulness of FDA’s potential approval. The hope is that the strength of the comment showing – over 1.8 million people opposed, scientific experts opposed, and a fatally flawed legal basis – will cause FDA to rethink the approval. If not, the filings will serve as the groundwork for litigation challenging the approval.

This issue is of utmost importance because if not halted, these GE fish will be among the millions of farmed salmon that currently escape from open ocean pens every year. This would likely be the last blow in the final decimation of our wild salmon stocks in California and beyond, currently on the brink of extinction. This approval would also pave the way for the approval of the 35 additional new GE fish.

Securing Labeling of GE Foods

Over the next several years, a major goal of CFS's work plan is to promote and secure federal labeling of GE foods. Through our work over the past two years on this issue, CFS successfully filed a legal petition with FDA demanding labeling of GE foods and also helped to collect more than 1.2 million comments in support of this petition. In addition, CFS was instrumental in Connecticut's June 2013 passage of the first-ever state bill to label all genetically engineered foods. CFS has written model GE food labeling legislation which has been used in dozens of state legislative efforts as well as federal legislation. CFS was also part of the core group that worked on Prop 37 in California, and now on I-522, a ballot initiative to label GE foods in Washington State.

The time is ripe for a shift in GE labeling policy. Already in 2013, over half of the states in the country have introduced bills to label genetically engineered foods. This groundswell of energy has created a climate where federal labeling on genetically engineered foods is quickly becoming inevitable.

- *Federal Legislation:* As a result of CFS's efforts in Congress, in April 2013, Senator Boxer and Representative DeFazio introduced a bill requiring all foods containing genetically engineered ingredients to be labeled. This bill was the result of a relationship cultivated over many years and CFS worked very closely with these members of Congress to craft the language of the bill. This is the first time in 13 years that a GE labeling bill has been introduced into the Senate.

Building on the momentum generated from the successful passage of Senator Begich's amendment to require labeling of GE fish, CFS will pressure additional members of Congress to co-sponsor the federal labeling bill. A successful outcome for CFS would have at least 40 Senators co-sponsoring the bill. While the bill may not become law, the process will put extensive pressure on FDA to respond to CFS's legal petition and require labeling. CFS's position is that FDA already has the authority to require nationwide GE labeling on its own and does not need the approval of Congress to do so.

- *State Legislation:* In the absence of federal labeling, states can and should take steps to protect the interests of their citizens, environment, farmlands, and farmers. Toward this end, CFS has been instrumental in getting 26 states to introduce legislation to require the labeling of GE foods. CFS drafted model legislation that has been adopted in full or part in many of the states. In addition, CFS staff members have presented testimony before several state legislatures, regularly participated in calls with state activists and legislative staff, and assisted activists with messaging for media and the general public. As mentioned above, CFS was instrumental in Connecticut's passage of the first-ever GE labeling bill in June 2013.
- *Ballot Initiatives:* CFS is also supporting I-522, a Washington State ballot initiative that, if passed, would require that all foods sold in Washington be labeled if they are produced using

GE. CFS has been tireless in providing legal and other expertise to the campaign including co-authoring the language and testifying before the Washington State legislature. CFS staff members are on the steering committee of the initiative and are providing critical legal, policy, media, and messaging expertise to the group. CFS also continues to be part of a coalition in California that worked on Prop 37 and the group is currently discussing the possibility of introducing a new ballot measure on this issue in 2014.

Stopping GE Alfalfa

CFS has a long history of fighting to stop the commercialization of GE alfalfa. In fact, as a result of our victorious legal cases, the planting of GE alfalfa was illegal for more than five years, from 2007-2011. In 2007, CFS won an unprecedented federal court battle, halting any further planting and sale of Monsanto's GE alfalfa because of its potential to contaminate organic and conventional crops, harm the environment, create herbicide-resistant "superweeds," and dramatically increase herbicide use. The court ordered USDA to rigorously analyze these impacts and halted planting until the agency made a new decision based on these analyses. Both the ban on planting and the court-ordered analysis were the first of their kind. As anticipated, Monsanto appealed the case not once, but twice. CFS was victorious in both at the United States Court of Appeals for the Ninth Circuit.



CFS stopped the commercialization of GE alfalfa for over five years

In 2009, Monsanto took the case to the only court remaining, asking the U.S. Supreme Court to hear their appeal. The GE alfalfa case became the first-ever Supreme Court case on the oversight of GE crops. Remarkably, against great odds, CFS gained a 2010 decision that, while reversing some of the lower court's decisions, resulted in CFS remaining victorious in every way that mattered. GE alfalfa remained unlawful to plant and sell. Farmers and environmentalist retained the right to go to court to challenge GE crops' impacts and USDA was required to analyze GE alfalfa's harmful impact and make a new decision.

In January 2011, USDA released the court-ordered EIS on GE alfalfa. The agency's own analyses showed that the crop, as CFS had argued, would cause substantial economic and environmental harm. As such, the agency first proposed to restrict its planting; however, under pressure from biotech industry, it capitulated and granted another unrestricted approval, making it legal to once again sell and plant the crop.

In response, CFS filed a new lawsuit against USDA in March 2011 with the goal of stopping the planting of GE alfalfa once again. This case involved a tremendous amount of CFS resources over the past two years, with Monsanto and USDA filing every possible legal motion along the way. CFS

lost at the district court in January 2012 and immediately filed an expedited appeal. Unfortunately, on May 17, 2013, the Court of Appeals for the Ninth Circuit ruled to uphold USDA's deregulation of GE alfalfa.

Although this last decision was disappointing, the case is not over and CFS will continue to pursue legal actions to halt the sale and planting of this harmful crop. CFS is currently petitioning for a rehearing. If granted, the rehearing will involve another round of legal briefings to the Court of Appeals—a process that could take up to a year. In addition, CFS is exploring numerous legal avenues for challenging the impacts of GE alfalfa including new legal challenges against USDA, EPA, as well as Monsanto.

Halting GE Sugar Beets

CFS has worked tirelessly to stop the commercialization of GE sugar beets. Because of previous successful litigation by CFS and others, USDA issued an EIS on Roundup Ready sugar beets in July 2012. Unfortunately, the EIS did not produce the desired outcome. Instead, it allowed for the unconditional deregulation of GE sugar beets. In response to the release of the EIS, CFS's two outstanding GE sugar beet cases came to a temporary close.

However, CFS celebrated a major success on the GE sugar beet issue at the National Organics Standards Board (NOSB) meeting in April 2013. Thanks to CFS, the NOSB voted unanimously against the approval of genetically engineered sugar beets in processed organic foods.

What makes the NOSB decision most remarkable is the fact that before CFS's legal comments and oral testimony were submitted, a preliminary vote by the NOSB revealed that at least seven members were in favor of approving the proposal. We have no doubt that this dramatic change was the result of CFS's efforts. This is a clear demonstration of CFS's influence and credibility on the issue of organic food integrity. While other members of the National Organic Coalition also opposed the proposal, CFS was the lead organization facilitating a strategic plan to continue to protect organic foods from genetically engineered sugar beet fiber.

Monsanto Protection Act

Another major issue that CFS has been involved with is fighting the biotech rider, dubbed the "Monsanto Protection Act," inserted into the March 2013 continuing resolution government spending bill.

The "Monsanto Protection Act" was included in the 6-month bill at the behest of Monsanto and the biotech industry – *and it expires on September 30, 2013*. It was a direct response by the biotech industry to the substantial success CFS has gained in courts over the past decade—a blatant attempt to make it more difficult to improve genetically engineered crop oversight and protect farmers and the environment. However, the rider does not prevent CFS or any party from filing a lawsuit against Monsanto, USDA, or any other entity.

CFS and our allies in Congress and the food movement are working hard to ensure that the “Monsanto Protection Act” dies at the end of the budget bill, and CFS is also lobbying to support an amendment in the current Farm Bill to repeal the rider. CFS has received pledges from leading legislators, including the chair of the Senate Appropriations committee, Senator Barbara Mikulski, that the rider will not be included in the next appropriations bill.

Given the attention the rider has received, it is helpful to clear up a few misconceptions about what it actually does and does not do. Contrary to misinformation making the rounds on the web, the rider does not protect Monsanto, or USDA, or any other party from being sued for violating the law, or prevent CFS from filing a lawsuit. It also does not affect any pending litigation. It does, however, create an extra, unnecessary and extremely constitutionally questionable hurdle for CFS and other consumer organizations to jump over in litigation on behalf of farmers, consumers, and the environment.

While the “Monsanto Protection Act” does not prevent CFS from suing over GE crops, it does make it harder for courts to impose strict protections. Specifically, while the rider is law, it means that if (1) CFS challenges a USDA GE crop approval in court, and (2) the court agrees with CFS that the government’s approval of that crop was unlawful, then (3) Monsanto and other biotech companies can go to USDA and demand that the agency allow the unlawful crop’s planting to continue under field trial permits. However, those permits themselves can then be challenged in court, and USDA can add specific provisions in the permits to protect farmers and the environment from harm from these crops. The rider does not affect past CFS court victories, pending litigation, and it is not retroactive.

CFS will continue to file legal actions against government agencies or businesses that are unlawfully approving, selling, or cultivating GE crops with the goal of protecting our food, our farms, and our environment. CFS will also continue to challenge the extension of this rider, or any similar rider, should they be proposed.

Protecting Honey Bees from Pesticides

CFS’s new Pollinators and Pesticides Campaign protects our honey bee population, which is currently under threat of decimation, from exposure to toxic pesticides. Maintaining healthy populations of honey bees and other pollinators is essential for the future of our world’s agricultural markets as well as for global food security. One in every three bites of food we eat depends on a crop pollinated by honey bees, and about 90% of all flowering plants require pollinators to reproduce.³ Over the past decade, we have witnessed an alarming decline in honey bee populations

³ Renée Johnson, “Honey Bee Colony Collapse Disorder,” Congressional Research Service Report for Congress, 7-5700, RL33938.

around the world with many colonies collapsing altogether. In fact, the U.S. Department of Agriculture estimates that since 2006, U.S. beekeepers have lost 30% of their colonies.⁴

Recently, scientists have identified pesticides (specifically a group of insecticides called neonicotinoids) as a primary contributing factor to pollinator population declines and poor honey bee health. Consequently, CFS's Pollinators and Pesticides Campaign is fighting to stop the use of neonicotinoids.

On March 21, 2013, CFS filed a lawsuit against EPA for its failure to protect pollinators from clothianidin and thiamethoxam, two dangerous neonicotinoids. CFS's legal work on this case has already involved a significant number of hours of attorney and staff time and will continue to be a major focus for the upcoming year.



One in every three bites of food is pollinated by honey bees, making their survival essential for our food security

In addition, CFS launched a BEE Protective outreach campaign to encourage colleges and universities to make their campuses “neonic-free.” The BEE Protective campaign also educates homeowners and backyard gardeners to stop using bee-toxic products and to take proactive steps to protect pollinators through a variety of initiatives like pollinator-friendly gardens.

Protecting our Rights to Seeds

CFS's Save Our Seeds (SOS) initiative is an extension of CFS's already successful legacy of protecting seed for future generations through legal challenges to halt the increase of GE crops. The two-fold aim is to undertake legal and policy strategies on both domestic and international levels that will: (1) “stop the bleeding”—eventually halting the rapid increase of seed commercialization and concentration in the hands of a few corporations such as Monsanto, Dupont, and Syngenta; and (2) “shift the consciousness”—advancing the ethical and legal principle that seeds and the right to save seeds is a public good and should be under the stewardship of communities and the commons.

In conjunction with the recent Supreme Court case, *Bowman v. Monsanto Co.*, CFS launched a new report, *Seed Giants vs. U.S. Farmers*. The report investigates how the current seed patent regime has led to a radical shift toward consolidation and control of global seed supply and how these patents have abetted corporations, such as Monsanto, to sue U.S. farmers for alleged seed patent infringement. It also examines broader socio-economic consequences of the present patent system including links to loss of seed innovation, rising seed prices, reduction of independent scientific inquiry, and environmental issues. Among the report's discoveries are several alarming statistics:

⁴ USDA Agricultural Research Service, CCD Steering Committee. Colony Collapse Disorder Progress Report. June 2012: www.ars.usda.gov/is/br/ccd/ccdprogressreport2012.pdf

- As of January 2013, Monsanto, alleging seed patent infringement, had filed 144 lawsuits involving 410 farmers and 56 small farm businesses in at least 27 different states;
- Today, three corporations control 53 percent of the global commercial seed market;
- From 1995-2011, the average cost to plant one acre of soybeans has risen 325 percent; cotton prices spiked 516 percent and corn seed prices are up by 259 percent;
- 86% of corn, 88% of cotton, and 93% of soybeans farmed in the U.S. are now genetically-engineered (GE) varieties, making the option of farming non-GE crops increasingly difficult;
- While agrichemical corporations claim that their patented seeds are leading to environmental improvements, upward of 26% more chemicals per acre were used on GE crops than on non-GE crops.

CFS has conducted significant media outreach to educate the public on critical seed issues and to draw attention to both the Bowman case and the *Seed Giants vs. U.S. Farmers* report, resulting in dozens of media articles at the international, national, and regional level. Articles on the topic were featured in major media outlets such as the front page of the *Washington Post*, the *Wall Street Journal*, *Reuters*, *Bloomberg*, *Huffington Post*, and many others. In addition, CFS secured an op-ed on this important issue in the *Los Angeles Times*. Among many others, CFS was also featured on the radio program, *Democracy Now!* where SOS Program Director Debbie Barker was interviewed by host Amy Goodman in a segment entitled, "[Bowman v. Monsanto: Indiana Farmer's Supreme Court Challenge to Corporate Control of Food Supply.](#)"

Bringing Accountability to CAFOs

The intensive concentration of animals by Concentrated Animal Feeding Operations (CAFOs) has resulted in a wide range of moral and ethical concerns from the inhumane treatment of animals (as well as workers) to antibiotic resistance and environmental pollution. The overarching goals of CFS's program to reform CAFOs are to protect consumers, animals, and the environment through greater transparency and accountability in the animal farming industry.

CFS's CAFO program has gained global attention through a number of recent accomplishments including a lawsuit against FDA for inadequate oversight of arsenic use in animal feed; a legal petition to halt the use of ractopamine as a feed additive; and a legal complaint against five dairies in the Yakima Valley for violating critical environmental laws.

During the upcoming year, CFS will continue to coordinate CAFO litigation and policy work throughout the United States. CFS manages a CAFO Legal Working Group which consists of more than 30 NGO organizations and environmental attorneys working on CAFO litigation. CFS facilitates this forum where members collaborate to pool resources, devise strategies, and implement

litigation. The group conducts monthly phone calls in addition to several smaller working groups. CFS's leadership on this issue is evident by the fact that over just the past year, interest in joining this group has quadrupled.

New CFS Website Launched

CFS is proud to announce the launch of our fully redesigned website, found at www.centerforfoodsafety.org. The new website caters to journalists, consumers, and activists by providing daily news updates, timely opinion pieces by our team of experts, and an expanded "Take Action Center" to fuel citizen engagement in current issues. The new website is a reflection of CFS's deep commitment to hard hitting analysis, public engagement, and the open sharing of critical information with the public.

Grassroots Outreach

Through grassroots outreach and public education, CFS has successfully facilitated public engagement on critical food issues. CFS's True Food Network (TFN), now over 325,000 members strong, empowers the public to take action on statewide and national policies and provides a groundswell of support for CFS's legal actions. In 2012, CFS recruited 60,297 new TFN members. Over the past year, CFS sent out hundreds of action alerts resulting in more than 550,000 comments and letters to Congress, state agencies and legislators, and to federal agencies such as USDA, EPA, and FDA.



*CFS's True Food Network is now over
325,000 members strong*

As part of this effort to engage the public in our work, CFS's new website features a regularly updated blog covering all of CFS's issue areas. CFS creates new content for the website on a daily basis and will launch new initiatives to increase our website visibility, including banner advertisements on key food blogs and websites. We expect that the new website and associated outreach will result in a significant increase in TFN membership. This increase will further our ability to successfully engage with the general public on CFS's issues.

Media Outreach

CFS continues to be featured in hundreds of media outlets every year. This includes major print, radio, and television outlets, as well as regional papers and radio and television news shows. During the past year, CFS staff were quoted regularly in major news outlets including the *New York Times*, *Los Angeles Times*, *Democracy Now!*, *Dan Rathers Reports*, *CBS Morning News*, *Living on Earth*, *The Guardian*, *Bloomberg*, and *Washington Post*. CFS also had several letters to the editor published including commentary on GE food labeling in the *New York Times* and the *Oregonian*, and had an opinion piece on seed patenting published in the *Los Angeles Times*. Executive Director Andrew Kimbrell is a

regular blogger on *The Huffington Post* (more than 10 million unique viewers each month) and other CFS staff members are regularly featured on high profile blogs such as *Grist*.

Conclusion

With support from the Nell Newman Foundation, CFS has become a critical leader in the fight to protect our food, our farms, and our environment. Throughout the grant period, CFS has celebrated many successes including halting the introduction of new GE crops; paving the way for GE food labeling; working to save honey bees from pesticides; protecting our rights to seeds; and bringing accountability to CAFOs. This work has included major legal victories, a quickly growing constituency, media outreach, as well as key policymaker victories at the local, state, and federal level. We are deeply grateful for the Nell Newman Foundation's support and look forward to continuing this exciting work together.