

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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FEBRUARY 6, 2003

Heidi Smith, Counsel, called the meeting to order at approximately 9:20 a.m. Also present from Board staff were Michael Manieri, Principal Safety Engineer, Tom Mitchell, Senior Industrial Hygienist and Donna Lively, Staff Analyst. Committee Members present were Emanuel Benitez, CRLA, Inc., Carl Borden, California Farm Bureau Federation, Chris Bunn, Grower, Manuel Cunha, Jr., Nisei Farmers League, Mark Draper, Del Puerto Harvesting Company, Elizabeth Ecks, California Labor Federation, Robert Falconer, California Association of Nurserymen, Fadi Fathallah, University of California, Davis, Biological and Agricultural Engineering, Roy Gabriel, California Farm Bureau Federation, Rosalinda Guillen, United Farmworkers of America, Bill Hoerger, CRLA, Inc., Anne Katten, CRLA Foundation, William Krycia, Division of Occupational Safety and Health, Ted Kubota, California Floral Council, Jesus Lopez, CRLA, Richard Matteis, California Seed Association, Mike Meuter, CRLA, Inc., Julie Montgomery, CRLA Foundation, Tom Rankin, California Labor Federation, Robert Roy, Ventura County Agricultural Association, Fausto Sanchez, CRLA, Inc., Mark Schacht, CRLA Foundation, Rayne Thompson, Agricultural Council of California, Michael Webb, Western Growers Association. Also present were Farm Workers Esperanza Villalobos, Anna Solis, Carmen del Valle, Maria Islas, and Sebastian Carmona. Juanita Ontiveras served as a translator.

Ms. Smith provided a brief overview of the Occupational Safety and Health Standards Board, the petition that led to convening this committee, the Board's history in addressing weeding and thinning practices in agriculture and the advisory committee process. Committee members also introduced themselves. Ms. Smith then turned the meeting over to Mark Schacht of CRLA Foundation to provide the labor representatives presentation.

Mr. Schacht explained that labor would try to present the problem as they see it, provide a summary of the petition they submitted to the Board, describe some cultural practices pertaining to crops and then present crop-by-crop evidence of short and long tool use as well as evidence of hand weeding. Mr. Schacht indicated that the background for this discussion begins with the banning of the short-handled hoe in the 1970s.

Mr. Bill Hoerger, CRLA, Inc. provided a legal history of the issue. Mr. Hoerger described the 1972 petition submitted to have the short-handled hoe declared unsafe under then Title 8, Section 3316. Mr. Hoerger noted that 11 physicians testified during the three days of public hearing that were held on that petition, all of whom stated that use of the short-handled hoe over a substantial period of time would cause abnormal degeneration of the spine resulting in permanent disability.

The hearings also examined whether the long handled hoe was an acceptable alternative to the short handled tool, which was contested by some grower representatives. Following some months of deliberations, the Division of Industrial Safety determined that the damage caused by the short handled hoe resulted from the manner in which it was used and not from any inherent physical defect in the tool. As a result, the DIS concluded it was powerless to prohibit its use under the existing regulation.

That decision was reviewed in January 1975 by the California Supreme Court. The Court decided Carmona v. Division of Industrial Safety, which Mr. Hoerger asserted held that any hand tool that caused injury, immediate or cumulative, when used as intended, could be considered an unsafe tool under then Section 3316. The Court remanded the matter to the DIS to evaluate the safety of the tool under those parameters. Mr. Hoerger stated that the DIS held additional days of hearing and issued an Administrative Interpretation that prohibited the use of short handled hoes.

In June 1993, the Division of Occupational Safety and Health's Medical Unit issued a memorandum on hand weeding that found that hand weeding defeats the intent of current Section 3456, because it requires workers to bend another six to twelve inches beyond what was required to work with a short handled hoe. The medical unit found that this places additional stress on the back and contributes to lower back morbidity. The memo stated that action was required to prohibit these activities.

Mr. Sebastian Carmona, the lead plaintiff in the referenced litigation, made some remarks in Spanish, which were translated by Ms. Juanita Ontiveras. Mr. Carmona stated that he began the fight against the short-handled hoe because he saw workers hurting themselves by bending to work.

Ms. Rosalinda Guillen, United Farm Workers, stated that California agriculture should aspire to something better than use of short-handled tools and noted that they did not use the short-handled hoe where she worked as a farm worker in Washington State. She asserted that California agriculture should look for ways to produce without injuring farm workers. She wants to help agriculture, but wants the issues addressed correctly.

Mr. Tom Rankin, California Labor Federation, stated that a truly protective standard for farm workers is needed. Mr. Rankin indicated that the best way to contain worker's compensation costs is to prevent the injuries from happening.

Ms. Anne Katten, CRLA Foundation, noted that the Division's Medical Unit's 1993 memorandum cited evidence that bending causes 20% more pressure on the back than standing erect, that farm workers are four to five times more at risk of degenerative back disease when using short handled hoes, and that, in addition to stressing the back, hand weeding exposes the hands to pesticide residue and infectious agents in the soil.

Mr. Schacht stated that various labor representatives have been bringing complaints to Cal-OSHA about the re-emergence of the short-handled tools in agriculture over the last ten years. Mr. Mike Meuter, CRLA, Inc., stated CRLA monitors practices in the fields and sees many violations of the ban on weeding with short-handled tools. When CRLA confronts employers, they receive diverging responses. Some growers are willing to fabricate longer, appropriate handles for their tools and some growers respond by requiring their employees to weed by hand. Mr. Meuter represented that the latter response is the more common one. Mr. Meuter asserted that a strong regulation is needed to remove the hand weeding option.

Ms. Julie Montgomery, CRLA Foundation, stated that she formerly worked in CRLA, Inc.'s Santa Maria office where she enforced health and safety regulations. She observed that a lot of growers fail to maintain their fields and do not weed often enough, which allows the weeds to become quite large. She asserted that a long handled tool can be used in almost all instances by using a modified long handled tool or a standard long handled hoe, and asserted that a grower should not be allowed to neglect its field maintenance and then claim that a long handled tool is inadequate to extract the weeds.

Mr. Schacht stated that labor sees its petition as a place to begin discussions and strive for consensus on an industry-wide standard. The standard would have three components: 1) that all workers be given appropriate long handled tools at all times unless a short tool can be used without bending, squatting or kneeling to weed, thin or hot cap; 2) a prohibition on manual weeding and thinning of all crops, except where plastic mulch or cloth is used; and 3) a legal obligation placed on growers and farm labor contractors to develop long handled tools for all crops for weeding, thinning and hot capping, except where a short handled tool would not require bending, squatting or kneeling, and to develop and use long handled tools for any practices or crops that are temporarily exempted. Labor would see any exemptions included in the regulation as potentially temporary.

Mr. Schacht stated that the exception for plastic mulch and cloth included in the petition proposal is a good faith effort by labor to respond to industry's concerns. Where there is an exception allowing for hand weeding for a particular crop or cultural practice, however, there must be safety measures associated with that practice, such as providing gloves and kneepads.

Mr. Schacht indicated that the evidence included in its presentation is only a portion of the evidence available to the labor representatives and is only the beginning of their evidence production. Mr. Schacht stated that the pictures, for the most part, were taken over the last several years. He stated that a list of the photographs along with their dates and locations would be presented to the Board.

Mr. Emanuel Benitez and Mr. Jesus Lopez, both community workers with CRLA, Inc., provided comments on the photographic evidence. Both gentlemen are former farm workers and have many years experience monitoring field practices and farm work.

These minutes do not attempt to describe all the photographs shown during the presentation. Rather, they reflect the oral comments that accompanied the photographs, some of which describe the photographs.

Mr. Schacht stated that the unsafe or unlawful practices associated with this crop are hand weeding and use of knives. These practices were observed in Salinas, Ventura and Coachella. A photo of hand thinning of broccoli in the Salinas Valley was shown. Mr. Lopez stated that there is no reason to thin by hand and he has seen many companies perform this work with long handled tools.

A second photo in Coachella Valley showed a worker using a short handled knife. Mr. Benitez indicated that during his ten years in the Ventura area, he saw many growers weeding many crops with long handled tools. Others used short handled tools and Cal-OSHA started citing those employers. After a while, however, some growers who were cited began to hand weed their crops while others would weed the same types of crops with long handled tools. CRLA also worked with Mr. Rob Roy of Ventura County Agricultural Association, and he would work with his constituents to address and correct the problem with short handled tools.

Another photo from Coachella showed workers using long handled tools. Mr. Benitez mentioned that the photograph was of an organic field. Mr. Lopez said that foremen for growers who weed by hand cite two reasons for the practice: one, it is permitted by Cal-OSHA; and two, because it is faster to do the work that way.

Lettuce

CRLA has observed use of knives and hand weeding in Salinas, Ventura, Coachella and San Luis Obispo Counties. Ms. Montgomery stated that the crew in one photo was weeding lettuce with short handled tools in San Luis Obispo and CRLA obtained an injunction to prohibit the practice. When CRLA monitored compliance with the injunction, they found the crew hand weeding.

Another photo depicted both short handled tool use and hand weeding in Oxnard. Mr. Benitez stated that he has seen many growers use modified long handled hoes for this work. A separate photo showed the use of long handled tools in a relatively dense lettuce field in San Luis Obispo. Mr. Benitez described a photo taken in Coachella in which the workers were weeding a romaine lettuce field using a long handled hula hoe. In that photo, the rows were widely spaced, which Mr. Schacht stated allowed the workers to see the weeds and allowed for the use of long handled tools without damaging the crop.

In another photo of a lettuce field, Mr. Schacht drew attention to the irrigation drip lines in each row and noted that long handled tools were being used.

A separate picture showed two unusual hoe heads. Mr. Benitez commented that the larger head is used for weeding and the shorter one is used to thin. Mr. Benitez stated that the bigger one is

also used to thin and it saves time because it allows the workers to use only one hit to achieve the proper spacing.

Mr. Lopez commented that, after the short handled hoe was banned, he saw all the crews using long handled tools. In the last seven years, however, he has seen crews hand weeding and using short handled tools.

Mr. Schacht indicated that another community worker, Mary Jacka, could not be present at the meeting, but would have asserted that weeding with long handled tools is done in many lettuce fields in the Santa Maria area where drip irrigation is used.

Sod

CRLA has seen use of knives and hand weeding in Kern, Ventura, and Coachella Counties.

A picture taken in Tehachapi showed a crew on its knees hand weeding sod. A picture in Kern County showed use of short handled tools. Mr. Benitez stated that, historically, he did not complain about short handled tool use with strawberries and sod, because he did not believe long handled tools could be used on these two crops. When he brought the short handled tool issue to Mr. Roy's attention, however, Mr. Roy was able to fix the situation. When Mr. Benitez moved to Coachella, he found that sod was weeded with long tools, as depicted in one of the photos.

Spinach

Knives and hand weeding were observed in Ventura and Salinas.

One photo showed hand weeding in Salinas. Another photo showed long handled tool use to weed fairly mature spinach. Mr. Lopez stated that he sees crews using both approaches as well as crews that use short handled tools.

Basil

Knives and hand weeding were observed in Coachella.

One photo showed use of a short handled tool. Another showed a short tool that was about two-feet long. Mr. Schacht commented that the furrow shown in the picture was not deep enough to keep the worker from squatting. Mr. Benitez spoke to the grower for that field and he agreed to develop a longer tool. Mr. Benitez stated that in another situation, the forewoman claimed that she could not use a long handled tool to weed the crop, and when she tried to show him that it would not work, she found that it did. She moved to a denser area and found that it continued to work and she tried a third area where it still worked.

Another photo showed a modified tool developed by Golden State Herbs, a grower, that is almost a full-length tool. Mr. Schacht commented that Golden State had a variance hearing before the Standards Board last year. A photo depicted the tools brought to the hearing. Mr. Schacht stated that the grower spent 15 minutes and \$12.00 to manufacture each tool at its machine shop. Mr. Schacht stated that the tool was essentially the tip of an asparagus knife spot welded onto an aluminum shaft and noted that modified tools with modified head designs have been developed throughout the state.

Mr. Schacht indicated that the grower testified that Golden State's tools were long enough to keep the workers from having to stoop, squat or kneel. Mr. Schacht noted that the existing standard does not require a tool to be 48-inches long to be legal; it just needs to be long enough that the worker does not have to stoop, squat or kneel.

Cauliflower

Use of knives and hand weeding were observed in Salinas.

One photo depicted a tool about two-feet long. Mr. Schacht commented that lengthening the tool could result in an acceptable tool. Mr. Meuter indicated that use of long-handled tools is also routinely observed in the Salinas Valley.

Cilantro

Knives and hand weeding have been observed in Salinas and Ventura.

A photo depicting a wide bed and use of a knife was shown. Mr. Schacht suggested that a different production approach could make use of long handled tools more acceptable. Mr. Lopez commented on a picture of a tool that was close to 48-inches long. He stated that the foreman indicated that it was easy to do the job using those tools. The foreman said his company does not use short tools for any crop; they find a way to use the longer tools.

Ms. Esperanza Villalobos, a farm worker, stated that she has 23 years experience working in the fields. Ms. Villalobos stated that some growers provide appropriate-sized tools, but increasingly workers are using short handled tools and are required to weed by hand. She indicated that, in addition to working bent over for eight to ten hours a day, they are required to carry bags in which they place the weeds they've picked to remove them from the field. She asserted that the growers are concerned with damage to the plants, but not about hurting the workers. At the end of the day, her whole body hurts from the bending. Ms. Villalobos believes that appropriate tools for the work can be developed and she referenced a photograph that Mr. Lopez has of such a tool.

Mr. Lopez showed the photograph that Ms. Villalobos referred to. Mr. Lopez explained that he had approached the grower about finding a substitute for short handled tools and the grower

responded by developing a tool within the week. Mr. Lopez now sees the crews using the long handled tool. In the photograph, the employer was weeding green lettuce, but he told Mr. Lopez that they would use the long tool to weed all crops.

Onions

CRLA observed use of knives and hand weeding in Kern, Salinas and Coachella Counties.

Mr. Lopez commented on a picture showing hand weeding and explained that, historically, they did not take pictures of long handled tool use, because they typically only photographed violations. Mr. Benitez described a picture of workers using knives in Coachella and stated that, when they talked to the company about the short tool use, the workers were told to hand weed. More recently, they found the grower using a modified long handled tool to weed.

Mr. Fausto Sanchez, CRLA, Inc., described a photograph taken in Kern County in which a long handled tool is used to thin onions. He noted that in another picture, they're using short handled tools and suggested that there is no justification for the use of the shorter tools. Mr. Sanchez stated that a grower's tool choice does not seem to vary with crop maturity: some growers use long handled tools when the onions are young as well as when they are more mature and some growers use only the short handled tools despite the plants' maturity.

Mr. Lopez explained another picture in which the foreman used a long handled tool while the other workers were hand weeding.

Ms. Katten testified that she has spoken to many farm workers from different counties, many of whom indicate that short handled tools are used to weed or thin.

Ms. Anna Solis, farm worker, stated that she has 22 years experience working with various crops in Coachella Valley. Ms. Solis said they work fine in the field, but they need help in the area of short handled tools. Now that she is older, it is very painful for her to work bent over all day. Ms. Solis hopes that a solution can be reached in which neither the crops nor the workers are hurt. Ms. Solis stated that often the weeds are very long when they go to work in a field and it takes a lot of force to remove them. Sometimes they have cloth or plastic gloves, but some of the weeds have thorns that penetrate the gloves and sometimes they slide because the weeds are so strong.

In response to a question from the grower representatives, Ms. Solis said that farm workers have worker's compensation coverage, but their injuries are cumulative, sometimes over years, so it can be difficult to make a claim. The employers tell the workers that they cannot help the workers if the injury occurred over a year ago. Ms. Solis has never filed a claim because of the one-year limitation that the employers tell her applies. Ms. Solis stated that the work can be done with the long hoe, but the growers do not want them to use the long hoe because they are

concerned about damaging their produce. In response to a question from the grower representatives, Ms. Solis explained that she also harvests and packs by hand.

Mr. Benitez asked Ms. Solis about a foreman who used a long handled hoe to weed onions and she explained that the foreman modified the tool for himself, but would not let others use it. The tool has a narrower head. Ms. Solis indicated that the foreman was able to work quickly and well with the tool. She said he worked faster than she could because he could get deeper into the plants without damaging them.

Ms. Carmen Consuelo Valle, farm worker, agreed with Ms. Solis' comments. She also described a situation that occurred last March in which the foreman had a modified tool that was exclusively for his use. Ms. Valle said that, if the other workers had been able to use a hoe like his, they could have been more efficient and could have worked without damaging the crop or themselves. This was the same foreman that Ms. Solis referred to.

Beans

Use of knives and hand weeding observed in Coachella and Fresno.

Mr. Benitez stated that he has seen crews weeding beans with long hoes.

Carrots

Use of knives and hand weeding observed in Salinas, Coachella, Cuyama and Kern Counties.

A photo showed use of long handled tools in Salinas Valley. Mr. Lopez stated that most crews use long hoes in the Salinas area. He stated that he does not see many large companies using hand weeding or short handled tools. Usually it is farm labor contractors who use those practices.

Mr. Schacht indicated that Ms. Solis' and Ms. Valle's testimony on carrots would be similar to their testimony on onions. Ms. Solis added that, in the Coachella Valley, they use the long hoe and they hand weed carrots. She stated that the growers worry about damaging the produce and some of the weeds are so strong that they cannot be removed with the hoe. Some of the weeds have thorns that penetrate the gloves they're given. It is the same situation they confront with the onions. She said they can work with a regular hoe, but it would be better with a modified hoe. Ms. Valle agreed with Ms. Solis' comments.

Tomatoes

Use of unlawful or unsafe practices observed in Fresno, Stanislaus and Oceanside.

Mr. Benitez stated that he has seen long handled tools used to weed field and bush tomatoes. Mr. Schacht added that another community worker, Efraim Camacho, could not be present at the

meeting, but would have told of a farm labor contractor who was told that short handled tools were illegal and who responded by providing long handled tools to the workers.

Parsley

Short tool use observed in Ventura County.

Mr. Benitez witnessed situations in which short knives were used to weed, but he also knows of a company in Moorpark that uses long tools to weed well-grown parsley. He does not have a picture of the long hoe use and estimated that he saw this about ten years ago, but he believes the company continues to use long handled hoes. Mr. Lopez added that he has seen several crews in the Salinas/Watsonville area using long hoes. He does not have pictures of the practice, because, as previously explained, there was no violation to record. Mr. Schacht stated that the record will be supplemented with sworn declarations where photographic evidence is unavailable.

Chile Peppers

Hand weeding, short tool use and long tool use observed.

One photo depicted hand weeding and another showed long tool use. Mr. Benitez explained that the two individuals bent over in the latter picture were picking a weed.

Mr. Rob Roy asked what would happen if an individual used a long hoe to cut a weed and then bent down to pick it up. Mr. Schacht indicated that the parties would need to discuss removal of weeds that are severed with a long handled tool. Mr. Roy indicated that, with some crops, such as sod, weeds must be removed from the field or they will propagate anew.

Mr. Schacht also stated that there were extensive discussions about intermittent hand weeding during the legislative process, but they were unable to agree on language that would be enforceable. Mr. Schacht acknowledged that it is a challenge that needs to be addressed. He stated that they are not seeking to prohibit intermittent and occasional hand weeding. Mr. Schacht mentioned a prior conversation with Tom Lanini, a weed ecologist at UC Davis, in which Mr. Lanini suggested that a time limit on hand work might be one solution. Labor originally proposed a one-minute limitation during the legislative process based on observations made in an organic garlic field where workers had long hoes, but occasionally weeded by hand. During the negotiations, that one-minute period evolved into 10% of an hour, but some labor representatives believe that is too great a percentage of time. The issue remains unresolved.

Ms. Solis commented that, when weeding with tools under plastic, workers still have to insert their hands under the plastic at times to get the root. She mentioned that bugs and animals, including rats, black widows and snakes, sometimes live under the plastic.

Squash

Use of short knives observed in Ventura and Santa Barbara Counties.

Mr. Schacht explained that it is not always possible to determine exactly what a given photograph depicts, but the photos are an effort to respond to the grower representatives' assertions that hand weeding and short tool use are not real problems. This is labor's attempt to show that there is substantial illegal activity occurring, substantial hand weeding and substantial evidence of long tool use. The latter evidence helps substantiate the availability of reasonable alternatives.

Celery

Use of knives and hand weeding observed in Ventura, Coachella and Salinas.

One photo showed short tool use and hand weeding. Another showed short tool use. Mr. Benitez explained that a third photo showed a long tool developed by a grower in Coachella to weed a celery field.

Garlic

Hand weeding observed in Salinas. Mr. Schacht indicated that they also have video footage of long tool use in the Coalinga area.

Mr. Lopez stated that he has seen both hand weeding and long handled tools used to weed garlic in Salinas. Ms. Villalobos indicated that garlic also requires use of scissors to cut the hair, which requires bending.

Cabbage

Use of hand weeding and knives observed in Ventura and Coachella.

Mr. Benitez observed hand weeding of organic cabbage. There was some question about the nature of the crop in the photo, but on closer inspection, it was seen that the cabbage plants were quite small and that larger weeds originally appeared to be onions.

Flowers

Hand weeding and short tool use observed.

One photo showed long handled tool use, but the workers were bent over. Ms. Rayne Thompson, Agricultural Council of California, asked if the practice shown was considered

acceptable and Mr. Schacht explained that the photo is intended to show that long handled tools can be used. He was not saying they were being used correctly.

Strawberries Pre-Mulch

Short tool use and hand weeding observed in Salinas, Santa Barbara and Ventura.

Mr. Benitez explained that a photo of winter strawberries in Ventura County showed the field before the mulch was applied. Mr. Schacht indicated that the exception included in labor's regulatory proposal that would allow for hand weeding where plastic or cloth mulch is used would not apply until the mulch was down. Mr. Benitez indicated that short handled tools are sometimes used to weed between beds and Mr. Meuter added that the exception would not apply in areas where the mulch was not present. Mr. Ted Kubota, California Floral Council, observed that there were likely three strips of drip tape right below the soil between the plants, which would be an issue the parties would need to discuss.

Strawberries with Mulch

Short handled tool use observed in Salinas, Santa Maria, Orange County and Oxnard.

In one picture, it appears that a worker might be culling bad product, but he may be weeding. In another picture, the worker is straddling the bed with a short tool. Mr. Schacht indicated that these photos suggest that a change in production practices could enable workers to use a long tool. Some of the grower representatives believed the first picture depicted a worker cutting runners.

Mr. Schacht stated that one picture also raises the issue of whether weeding can be done with anything other than hands through the small openings in the plastic, which is a concern because of the prevalent use of methyl bromide in the soil. Labor representatives question the advisability of the exception contained in their proposed language because of the presence of methyl bromide in the soil. They view the exception as a major concession and believe it raises the need to develop a tool to use during parts of the production process.

Mr. Roy responded that methyl bromide is a pre-plant fumigant that dissipates within approximately 72 hours and is put approximately 24 inches into the soil. Mr. Roy stated that the plants are put in a month or two later and it takes approximately 90-100 days to come to fruit. Mr. Roy indicated that workers would not touch methyl bromide tainted soil. Ms. Katten stated that she believes methyl bromide takes longer than 72 hours to dissipate but she did not dispute Mr. Roy's general position. She asserted, however, that workers could have dermal contact with other pesticides used later in the production process. Mr. Roy agreed.

That concluded the labor presentation and the floor was opened to questions and comments.

Mr. Roy Gabriel, California Farm Bureau Federation, stated that the Farm Bureau does not condone the use of short handled tools prohibited by the current regulation and has no interest in seeing an exception that would permit them. They also support the use of long handled tools, but there are exceptions to the use of such tools that will require discussion.

Mr. Roy asked Mr. Rankin if he had any studies to support his comment that use of long handled tools would reduce worker's compensation costs. Mr. Rankin did not have any specific studies, but referenced the 1993 memo issued by the Division's Medical Unit. Mr. Roy wondered whether there was any economic evaluation regarding cost savings to the industry if a conversion to long handled tools occurred.

Mr. Mike Webb, Western Growers Association, asked Ms. Montgomery about her comment that a lot of growers fail to properly weed their fields. Ms. Montgomery indicated that she did not know what percentage of growers this would apply to and suggested it might be more prevalent in some areas than in others. She stated that her comment was based on field observations as well as input from CRLA's clients.

Mr. Webb asked if increased pesticide use would be an effective way of improving field maintenance. Ms. Montgomery responded that more frequent weeding is needed so that the weeds are smaller. Ms. Montgomery stated that neglect of the fields should not be a legitimate basis on which to contend that long handled tools cannot be used. Ms. Ontiveras indicated that the farm workers present agreed with Ms. Montgomery's assertion that the weeding should occur with a modified, long handled hoe when the weeds are young and tender.

Mr. Manuel Cunha, Nisei Farmers League, asserted that there has to be a limit placed on the employers' responsibility. He asked what would happen if workers were provided long tools, but a worker opted to bend to pick a weed, which someone then documented. Mr. Schacht acknowledged the growers' representations that some weeds, or patches of weeds, defy the use of tools and agreed that they must address intermittent, occasional hand work. Mr. Lopez commented that he would not document an occasional incident of hand weeding. He stated that the workers need the growers and he only documents situations where groups of workers spend hours engaging in these practices.

Mr. Cunha added that labor is the single greatest cost in farming and commented that even good farmers cannot always afford to weed frequently enough to ensure that the weeds are small. Ms. Guillen acknowledged the need to protect the viability of both workers and growers and expressed confidence that a solution exists that will not injure workers or break farmers' profitability. She urged the discussion to focus on such solutions.

Ms. Montgomery stated that more frequent weeding might be more expensive, but asserted that many growers do it. Ms. Montgomery further stated that, irrespective of cost, certain minimum standards are needed. She analogized to minimum wage standards and asserted that some employers may believe they cannot afford minimum wage, but they have to pay it. Ms. Katten

suggested that early weeding can reduce the amount of weeding needed overall, which could mitigate any cost impact of weeding more frequently in the early stages.

Ms. Thompson stated that she would like to work toward a mutually beneficial solution and expressed interest in hearing more specifics regarding what would be acceptable to labor so that she can respond in kind on behalf of her membership. She and other grower representatives also expressed interest in seeing a more blended seating arrangement at future meetings.

Mr. Gabriel asked if there was a long-term intent to look beyond hand weeding to hand harvesting and Mr. Schacht responded that none of the labor representatives has raised the issue of harvest stooped labor in thirty years. They have focused on the short handled hoe, because there is an alternative to its use.

Mr. Schacht further stated that the compensability of farm workers' back injury claims through the workers' compensation program is very much a concern and, if this regulatory approach fails, labor likely will seek a medical presumption in the workers' compensation system for farm workers who suffer back injuries. Rather than address injuries after they occur, however, labor is hoping to prevent injuries by limiting hand weeding and thinning.

Mr. Gabriel asked whether CRLA had opposed the mechanization research conducted by the University of California. Mr. Hoerger explained that CRLA had opposed the University's funding of research that would benefit only large farms when the money allocated was specifically for projects directed to assist family farms.

Mr. Carl Borden addressed three points. In response to Mr. Schacht's suggestion of a worker's compensation presumption for farm workers' back injuries, Mr. Borden stated that regulations should be based on science and asked whether there were any epidemiological reports regarding the prevalence of the types of injuries suffered. Mr. Borden stated that people's backs tend to deteriorate with age and asserted that there would be causation issues to address there. Mr. Borden also stated that there is a need to scientifically address the degree to which hand weeding might be permitted. During the legislative process, Mr. Borden felt that the time periods discussed were arbitrary. He further asserted that allowing specified amounts of hand weeding could lead to record keeping obligations for employers, because, even if it were not a requirement, growers might feel the need to keep records to defend themselves, much like they do to demonstrate that meal and rest periods were given. Mr. Borden also questioned the legality of requiring growers to develop innovative tools to allow workers to perform their tasks in an upright position. Mr. Borden stated that the Carmona decision looked at whether an alternative was available and he argued that labor seems to assert that hand weeding should be outlawed in order to spur development of alternatives that do not yet exist.

Mr. Schacht noted that the Division's Medical Unit's 1993 memorandum cites a 1986 study on page four under "Disk Degeneration" that evaluated one-minute work cycles. Mr. Schacht indicated that they relied on that study during the legislative process to conclude that

permissible, intermittent hand weeding should be very limited in time. Mr. Schacht stated that they have tried to base their proposed time-limitations on the scientific literature available.

Mr. Hoerger added that there is a paucity of scientific literature that specifically evaluates agricultural practices, so they attempt to extrapolate from what is available. He also commented that his reading of Carmona would allow Cal-OSHA to ensure a safe workplace, broadly defined, and would allow Cal-OSHA to require employers to improve safety. Mr. Hoerger added, however, that Mr. Borden's point regarding tool innovation is a fair one. Mr. Hoerger stated that the industry has done a phenomenal job of underwriting research designed to increase productivity and he suggested that a modest financial commitment from the industry would allow for extensive research on ergonomically safe tools. Mr. Hoerger stated that this could be done independently of any regulatory action.

Mr. Mark Draper, Del Puerto Harvesting Company, questioned whether CRLA's community workers will continue to document hand weeding and growers' violative practices, the latter of which are shared with Cal-OSHA, while the parties try to reach a resolution on this issue. Mr. Hoerger stated that CRLA's priority in conducting field work is to obtain voluntary employer compliance. Where voluntary compliance cannot be achieved, CRLA contacts Cal-OSHA. Mr. Hoerger indicated that those practices will not change. Mr. Draper responded that the CRLA's methods are not always the most productive.

Mr. Roy stated that he has been representing farmers for 27 years. He has done a number of health and safety programs, and advises clients regularly on these issues. Mr. Roy suggested that this is largely a symbolic issue. He stated that it is important to protect farm workers and, if there are reasonable alternatives, they should be implemented, but farmers are under increasing pressure and the committee will need to be creative in looking at options. Mr. Roy suggested the possibility of a pilot program, a phase in period over a couple of years or the possibility of incentives for employers who implement better practices. Mr. Roy observed that part of finding a solution is to be flexible, including with respect to allowing hand weeding in certain crops and in certain operations.

Ms. Elizabeth Ecks stated that this is not a symbolic issue for the labor representatives; workers' injuries and the safety of the workplace are serious concerns for labor. While Ms. Ecks acknowledged the importance of having a scientific basis for any action taken, she also stated her opposition to conducting extensive research that would delay a resolution of the issues before the committee. She agreed that changes in this area could impose costs and obligations on employers, but urged the participants to start looking at possible solutions and seeing where limited allowances need to be made.

Mr. Schacht stated that labor is participating in this forum because the Governor wanted to try this approach. Mr. Schacht stated that there is a lot of pent up demand for a solution from labor's perspective, and Mr. Schacht's clients will become as impatient as Mr. Roy's clients if it appears that the growers are using this forum to delay this process. Mr. Schacht commented that

Cal-OSHA has a duty to provide a safe workplace and asserted that it has evidence before it that alternative tools are available and can be readily developed. Mr. Schacht did not think the agency was precluded from requiring farmers to develop tools where they can be developed. Mr. Schacht referred to an organic lettuce grower, Professional Horticultural Associates, that developed a tool over a period of time. Mr. Schacht stated that labor is receptive to the idea of affording a grace period for a practice or crop if there is evidence that a tool cannot be reasonably developed quickly and cheaply. And, if Cal-OSHA concludes that it cannot require growers to develop tools, labor will seek that authorization from the Legislature. Mr. Schacht suggested that labor might attempt to address some issues in this forum and save others on which there is more contention for the Legislature.

Mr. Chris Bunn, grower, commented on the diversity of tasks involved in farming and suggested that this is not a yes or no issue. He stated that the farmers and the workers are the people who truly understand the issues and who appreciate the circumstances under which the work is performed. He asserted that weeding with a hoe in a wet field is harder on the back than waiting until the weeds are a little bigger and pulling them out by hand. Mr. Bunn stated that it would be insane to have workers hand weeding if they could be using a hoe, because the latter is more economical. The worst thing for a farmer is to have a worker sit down and a farmer would only do so if the crop were sufficiently valuable that sitting and weeding were the only alternative. Mr. Bunn stated that time-motion studies indicate that it gets expensive when a person stops walking. Mr. Bunn acknowledged that there are some abuses, but asserted that the majority of the industry that he is familiar with would not engage in the type of practices depicted in the presentation. He contended that engaging in such practices unnecessarily would bankrupt many farmers. He also observed that it would be very difficult to weed some crops other than by hand without incurring a substantial economic risk.

Ms. Smith stated that the Board has tremendous capabilities that it can bring to this process, including expert drafters who can devise language for an enforceable, meaningful regulation. Ms. Smith commented that regulations sometimes contain imprecise terms such as “reasonable” and “incidental” and noted that such terms do not render a regulation unenforceable or problematic. She added that it is often advisable to get a regulation drafted and in force, even if it is not perfect, and let it run for a couple of years. If it later requires revision, it can be revised. She acknowledged the need to be creative, including, for example, by providing a phase in period. Ms. Smith encouraged the committee members to stay open to those possibilities and accept that a regulation may not be perfect from the outset, but could represent real progress. While the Board’s authority is not unlimited, it does have broad discretion.

Ms. Smith confirmed that the next meeting would include a presentation by the grower representatives and stated that the growers may set up the room however they would like. She also proposed the possibility of establishing a subcommittee to address possible regulatory language, so that committee members would not have to devote too much time to this process. She added that a subcommittee might also allow the process to progress more quickly, because it is difficult to convene this large a group. Ms. Smith commented that it was likely unrealistic to

think that a regulatory agreement could be reached within a couple meetings, but stated that she thought the prospects were good if people were willing to commit some time to working through the issues.

The committee members agreed to reconvene for the growers' presentation on March 24, 2003.

Mr. Gabriel commented that the growers hope to see this issue resolved in this forum, this year and asked whether a regulation could be adopted this year. Ms. Smith indicated that Board staffing issues and the procedures required to adopt a regulation make adoption of a regulation this year unlikely. Ms. Smith noted that it has also been difficult to agree on dates for these meetings and noted that the participants and their availability would have a significant impact on how quickly the process can proceed. Ms. Smith stated that the Board would commit to doing what it can to keep this issue moving.

Mr. Gabriel asked Mr. Schacht if he could accept this time frame and Mr. Schacht responded that he could not say. Mr. Schacht noted that the regulatory progress could be affected by public comment from people who do not participate in the advisory committee process and do not like the regulatory proposal. He suggested the possibility of informal discussions between now and the March 24th meeting.

Copies on CD of the presentation made by the labor representatives were given to all meeting attendees at the conclusion of the meeting.