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Subject: Western Organization of Resource Councils Comments to USDA-DOJ Workshops
Attach: GM comments 12-29-09.pdf

WORC comments to USDA and DOJ

Anti-trust Workshops

December 29, 2009

Submitted electronically at www.usdoj.gov/atr

The Western Organization of Resource Councils (WORC) is a regional network of seven grassroots community organizations that include 10,000 members and 45 local chapters in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, and Wyoming. WORC members are farmers, ranchers, other working people, and consumers. The WORC strengthens its member groups and local community chapters by coordinating regional issue campaigns and by providing training and leadership development, technology assistance, communications and media, and representation in Washington, DC.

WORC has a unique regional model of local community organizing, membership base building and leadership development combined with strategic advocacy around multi-state campaigns. Our constituency of conservationists and family farmers and ranchers is also unique among conservation and community organizations. Our leadership and organizer training schools have a national reputation. Our integration of civic engagement activities into campaigns and projects affords us one of the most complete applications of all the tools of organizing, advocacy and voter participation among environmental and community organizations.

WORC would like to thank you for the opportunity to comment about these very important workshops you will be holding throughout the spring and summer 2010. Following are the main concerns we have about antitrust issues in the seed industry and the impacts of genetically engineered crops and the ability for corporations to patent them. We have also provided solutions for you to consider as you move forward in this process.

We also look forward to working with you as you develop these workshops and their scope more fully and are available to answer any questions you may have or provide additional information. For more information, please contact Jeri Lynn Bakken, WORC's Regional Organizer for Agricultural Issues at 701-376-7077 or by email at jerilynn@worc.org.

A Brief History of WORC's History in GM Crops

WORC is in its eighth year of a farmer-led campaign to ensure the long term social, environmental and economic impacts of GM crops are considered before their introduction in the Northern Great Plains. One of WORC's goals is to ensure that all farmers have fair, affordable access to seed without fear of contamination by GM crops or fear of retribution by corporate agribusiness.

Our work on this issue began in 2001 with concerns about the potential introduction of a variety of wheat (called Roundup Ready wheat) genetically modified to resist Monsanto Co.'s Roundup herbicide, and the effects the wheat might have on rural economies and the environment.

These concerns became the basis of the *No GM Crop Project*, which has grown from a small group of farmers in North Dakota and Montana, to a coalition of farmers, dairy producers, consumers, market experts and national and international allies all working to protect the economy from antitrust behavior, environment and human health from the known and unknown risks of genetically modified crops.

In June, 2008 WORC joined farmers, consumers and civil society organizations in Australia, Canada and the

U.S. in a joint statement confirming the groups' collective commitment to stop commercialization of GM wheat. The statement was released to counter a May 14 "Wheat Commercialization Statement" released by industry lobby groups in the three countries. In the statement, the biotech industry pledged to "work toward the goal of synchronized commercialization of biotech traits in our wheat crops." Our allied statement was released by 15 groups in Australia, Canada and the US, including the National Farmers Union, the Canadian Biotechnology Action Network, WORC, the National Family Farm Coalition in the U.S. and the Network of Concerned Farmers in Australia, and counters industry arguments in favor of GM wheat.

The Problem:

Since the beginning of WORC's campaign the seed industry has rapidly consolidated and only a few companies currently dominate and control the seed supply. Ten companies account for about two thirds of the world's proprietary seed. This includes branded seed varieties that are subject to intellectual property protections. Economists say that an industry has lost its competitive character when the concentration ratio of the top four firms is 40% or higher. In seed, the top four firms account for 50 percent of the proprietary market. This level of concentration is a huge problem because it reduces choice and increases prices for the average American farmer.

The problems encompassing the seed industry and anticompetitive practices they currently use are reviewed in a recently released report from the Farmer to Farmer Campaign called *Out of hand: Farmers face the consequences of a consolidated seed industry*. The full report can be downloaded at www.farmertofarmercampaign.org.

Impacts on Farmers and Consumers

This level of concentration has a tremendously negative impact on farmers and their communities. Because Monsanto developed the genetic trait for Roundup Ready crops, it owns the patent on those crops. The company controls them from seed, to planting, to harvest. Technology Agreements that shield Monsanto from liability for accidental contamination or any other problems its product may cause. The effect of these agreements is to pit farmer against farmer, and to let Monsanto off the hook for any economic damage caused by its product. The increasing control that patented seed technologies afford transnational companies reduces the availability of affordable, public seed varieties, and increases corporate control over American farmers and ranchers, and North American agriculture as a whole.

These patented seed technologies reduce the availability of affordable, public seed varieties and further reduces the control American farmers and ranchers have over U.S. agriculture. Farmers in the WORC region report that it has become increasingly difficult to even find conventional seed for soybeans, corn and canola. This is a result of companies like Monsanto buying out mom and pop seed dealers to replace them with their own seed genetics.

The lack of choice hurts our markets and our communities

The damage to rural communities goes far beyond the risk to farmers. Many international markets, especially in Europe and Asia, do not want GM wheat. Millers in many countries have said they will stop buying wheat from the United States if GM wheat is approved for planting and sale in the U.S. Just next door, the Canadian Wheat Board has stated that they will not accept GM wheat in their country.

Professor Robert Wisner, an agricultural economist from Iowa State University, produced a study showing that nationwide the United States will lose up to 50% of its foreign wheat markets, and that the price of wheat will fall 30 to 40% as soon as GM wheat is approved. In communities where wheat is a staple crop, this means 30-40% less money to spend in local grocery stores, restaurants and in taxes for basic needs like schools and roads.

The damages to rural communities are also locally economic. As fewer and fewer corporations sell seed, there are fewer and fewer independent seed dealers in small towns. When businesses are bought out, we must take into account the amount of money leaving the state. Currently, some wheat seed is purchased from seed dealers whose headquarters are outside of the region, but a significant amount of seed is purchased from neighbors,

local elevators or kept from a previous year's crop. With the introduction of GM crops, that seed is purchased from a multinational corporation, which, in the case of Monsanto, is headquartered in St. Louis, MO. Yes, they have seed dealers in every state, but a bulk of the profit goes out of the communities of Eastern Montana or North and South Dakota.

In these rural states, where wheat is king, there is no doubt that such a significant drop in price and loss of seed sales has rippling effects throughout the region.

Solutions:

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he consequences of seed industry consolidation cannot be ignored. It is the Department of Justice's responsibility to protect the farmers who are victims of seed company consolidation and manipulation of the industry. WORC supports the solutions outlined in a recent study issued by the Farmer to Farmer Campaign called *Out of hand: Farmers face the consequences of a consolidated seed industry*. The full report can be downloaded at www.farmertofarmercampaign.org.

As this report explores, farmers are experiencing less choice in the seed marketplace as prices increase at historic rates. Reversing these trends will take a serious examination of current conduct by dominant firms and the role patents have played in seed industry consolidation. Furthermore, rebuilding public plant breeding programs is central to expanding choice and meeting the diverse needs of farmers.

Revamping patent law on seed would restore some of farmers' basic rights. The level of control biotech firms wield over farmers is a function of an intellectual property system that puts industry profits before the interests of farmers. A system that works for seed developers and farmers alike will return choice, fair prices, and transparency to the U.S. seed industry.

In particular, removing plant utility patents would level the playing field for farmers by re-establishing the time-honored right to save seed and eliminating patent infringement investigations that lead to out of court settlements, lawsuits, and intrusions of property and privacy rights. Federal legislation is needed in the short term that provides farmers who face patent infringement allegations an equal playing field in these investigations.

Lastly, antitrust law must be enforced when there is evidence of anticompetitive conduct in the seed industry. We must ensure that farmers have an open and fair marketplace that encourages innovation and provides a variety of seed options at competitive prices.

WORC's policy recommendations, which are listed in the "Out of hand: Farmers face the consequences of a consolidated seed industry" report, include:

- Seed industry concentration is indisputable. The top 4 firms account for 43% of the global seed market and 50% of the proprietary seed market (i.e. branded seed with intellectual property protections). Monsanto and its subsidiaries control 60% of the U.S. corn and soybean market. 90% of soybean and cotton acreage and 80% of the corn acreage in the U.S. is planted with one or more of Monsanto's traits.
- Patents and intellectual property rights in seeds and genetics have been a major contributing factor in seed industry concentration. The Supreme Court decision in Pioneer v. JEM Ag Supply allowing patent law application to seeds coupled with aggressive use of restrictive licensing agreements and the high cost of seed research and development have driven competition out of the marketplace. More than 200 independent seed companies have been lost in the last 13 years.
- Seed prices have skyrocketed as seed industry became concentrated. Corn seed prices jumped 12% in 2007, 27% in 2008 and 34% (projected) in 2009 resulting in a 46% increase in 3 years. Soybean prices have risen 32% in 2009 with much of the increase the result of technology fee increases (i.e. \$6.50/bag in 2003 to \$17.50/bag in 2008).
- Farmers' choice in seed has dwindled as seed industry became concentrated. Monsanto had employed a *trait penetration plan* to force farmers to use multi-stacked, genetically engineered (GE) seed varieties.

Monsanto has developed regional pricing programs offering low cost GE varieties to lure farmers to buy genetically engineered varieties. As farmer adoption rates rise, conventional and GE varieties are eliminated and farmers are forced to use the higher priced, multi-stacked varieties. In 2009, triple-stacked Monsanto corn varieties were priced at \$350/bag – a \$100/bag increase over 2008 prices, while conventional seed varieties cost \$50-100/bag less. In 2009, 70% of corn seed sales were in triple-stack varieties, arguably due to lack of other seed options.

- Patents have impacted farmers' choice in seeds. Patents have resulted in a prohibition in seed saving. Farmers' ability to save seed provides them with options and choices that are no longer available and influenced market prices in seeds. Threat of liability/lawsuits for alleged patent infringement has also led farmers to adopt GE varieties and/or continue using those varieties despite the availability of lower priced, higher performing options.

Workshop Participation Request:

Finally, WORC would like you to consider the following expert and farmer as panelists to address these issues at the workshop to be held in Iowa in March.

- Neal Harl—Economist at Iowa State University
- Todd Leake—Farmer from Grand Forks County North Dakota, Chair of WORC NO GM Crops Project

Sincerely,

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