

# 2009 POSITION PAPER

WINEGRAPE GROWERS OF AMERICA and WINEAMERICA

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## **BATTLE AGAINST THE GLASSY-WINGED SHARPSHOOTER AND PIERCE'S DISEASE**

Pierce's disease, a fatal infection of grape vines caused by the bacterium *Xylella fastidiosa* (Xf), is being spread throughout California by the glassy winged sharpshooter (GWSS). GWSS was first detected in California in 1989. It has invaded much of Southern California and is established in the southern San Joaquin Valley.

This vigorous and difficult-to-control insect vector, indigenous to the southeastern United States and northern Mexico, threatens California's entire grape and wine-producing community. Commercial grape varieties grown in California cannot tolerate infection by the Xf bacterium and are quickly killed or rendered uneconomic. Xf infection spread by the GWSS is much more likely to kill grapevines because it frequently introduces the bacterium at the base of the cane and is less likely to be removed by pruning. There is no cure for Pierce's disease.

Even though the GWSS was introduced to the state only within the last decade, *xylella* based diseases (almond leaf scorch, phony peach disease, oleander leaf scorch, alfalfa dwarf disease and miscellaneous diseases affecting ornamental plants and shade trees) spread by the GWSS threatens to devastate grapes, tree fruits, almonds, and various ornamentals throughout much of the state. Without adequate control of this disease complex, virtually all vineyards in California are at risk. Significant degradation of almond orchards by *xylella* infection and serious loss of citrus production and quality caused by GWSS feeding is a very real and present danger.

The onslaught of the GWSS and its spread of Pierce's disease have triggered a massive and expensive cooperative response by federal and state agencies, California nurseries, citrus and winegrape growers to contain, control and eventually eradicate the GWSS in California. The risks to California agriculture presented by the GWSS were recognized by a USDA declaration of emergency June 23, 2000 and subsequent allocation of CCC funds to conduct research, manage and fight the disease.

Congress appropriated money to fund GWSS and Pierce's disease research beginning in FY 2001 and every year thereafter. The Animal and Plant Health Inspection Service (APHIS) received Congressional appropriations of \$8.5 million in FY 2002, \$17.5 million in FY 2003, \$22.25 million in FY 2004, \$23.19 million in FY 2005 and \$24.25 million in 2006 for GWSS containment and control. The figures for FY 2007 are difficult to decipher because appropriations bills were not passed for that year. For FY 2008, Congress provided \$23.175 million.

Through the appropriation process, Congress has funded an annual Cooperative State Research Education Extension Service (CSREES) special grant to research Pierce's disease (\$2.211 million in FY 2006) that has significantly supplemented Agricultural Research Service (ARS) research on the GWSS. This special grant, like others in FY 2007, was not funded. Only \$1.642 million was appropriated for FY 2008 and \$1.531 million in FY 2009. The special grant selects recipients based on a peer reviewed competitive process with grants ultimately disbursed to scientists in several states.

In 2001, winegrape growers in California successfully passed state legislation to create a mandatory winegrape grower assessment and a Pierce's Disease Advisory Board. In a 2005 referendum, growers representing almost 90% of the total value of winegrape production in California voted to continue the program for five more years. The assessment so far has raised more than \$38 million. The assessment has

helped to fund critical research efforts, has funded a bulk grape inspection program, and has funded a National Academy of Sciences review of research efforts. A Science Advisory Panel of top national researchers has recently been appointed to provide scientific peer review for ongoing projects and strategic advice for new projects that will result in a long-term solution. The State of California also has contributed about \$50 million to the program.

Research on the GWSS and Pierce's disease also will benefit Texas where GWSS and PD impact the state's winegrowing business and other states interested in GWSS/PD exclusion. These include states in the Southeast where Pierce's and other *xyella* based diseases vectored by the GWSS severely impact the development of winegrape production and potentially poses a danger to other fruit crops including citrus in Florida (citrus variegated chlorosis) and peaches in Georgia.

To combat this disastrous disease, WineAmerica and the Winegrape Growers of America believe that Congress should continue to supplement state and private efforts. We respectfully request that:

- Congress specify funding for the APHIS Containment and Control program at \$30 million for FY 2010.
- Congress provide funding for the CSREES special grant for Pierce's disease and Invasive Pests for the University of California at \$3 million for FY 2010.

## **GRAPE AND WINE RESEARCH**

To prosper in the face of strong international competition—roughly 30% of wine consumed in the United States is imported—the American wine and grape growing industry must lead in the production of wines with superior quality, excellence and value. Such a formidable task is extremely research intensive. To remain competitive with foreign producers, to improve the environmental quality of grape growing practices, and to combat and prevent grape diseases, significant additional research investment must be made.

To successfully compete in the world market where other countries have competitive advantages, including government subsidies, lower land costs, less expensive labor and less stringent regulatory requirements, American grape and product producers need cutting edge research to produce the highest quality consumer products.

WineAmerica and WGA support increased appropriations for viticultural research.

### **The CSREES Viticulture Consortium**

WineAmerica and WGA support funding for the very successful Viticulture Consortium which has been administered as a *national competitive, peer and industry reviewed* program. It is one of the finest examples of collaboration between industry, federal and state resources to provide and enhance efforts to improve a major agricultural industry's quality and cost effectiveness. Grapes are the nation's sixth largest crop overall and the largest specialty crop with a yearly farm gate value of nearly \$3.5 billion. From the Viticulture Consortium's founding in FY 1996, research conducted by partners and supported by the Viticulture Consortium has been a major factor in developing grape production in new areas across the country and in building quality and cost effectiveness in existing grape producing regions. Such advances have allowed the country's grape growers and wineries to retain and enhance their competitiveness in a very globalized marketplace.

Initiated in FY 1996, the Viticulture Consortium received a Cooperative State Research Education Extension Service (CSREES) special grant of \$1.6 million in FY 2008 and \$1.454 million in FY 2009. **This most valuable program should be funded as a special grant in FY 2010 with funding of \$2.5 million.**

The Consortium is a unique national model because it has inspired matching funds from both industry and state sources which have increased dramatically in response to growing federal support. As an active partnership of federal, state and industry resources, the Consortium enhanced research coordination and collaboration, improved efficiency and eliminated duplication of effort. It funds relatively small practical grants for state researchers in about twenty states through a competitive process, including California, Pennsylvania, Michigan, Missouri, Virginia, New York, Ohio, Oregon, and Washington.

The development of the national strategic plan by National Grape and Wine Initiative targets research proposals to priority industry needs. The Viticulture Consortium collaborates with land grant Universities and also funds the extension of research results to growers, wineries and processors to stimulate innovation and accelerate the adoption of new best practices.

**Agricultural Research Service (ARS) Research--ARS sponsored grape research must keep pace with the needs of a research intensive, high value crop facing global competition based on product quality. Congress has been building important grape research capabilities for grape genetics (Geneva, New York).** For FY 2010, we are requesting that Congress increase funding by \$250,000 to provide for additional ARS grape genetics research at Geneva, New York.

**ARS Center for Grape Genetics--ARS grape genetics research at Geneva, New York has expanded in the last few years and there is now a serious need to add laboratory, greenhouse and office space.** We are therefore requesting that Congress provide the necessary funds, approximately \$17 million in FY 2009, to complete construction of the ARS Center for Grape Genetics (Geneva), for which engineering and architectural funds were provided in FY 2004, \$3 million in FY 2005 and \$3.625 million in FY 2006, \$1.883 million in FY 2008 and \$2.192 million in FY 2009. **Total cost of construction is estimated to be a little more than \$27 million. This will represent a critical investment to enable ARS to assume a proper role of national and world leadership in grape research.**

#### **TAXES-ESTATE TAXES-CONSERVATION EASEMENT-ASSN HEALTH CARE PLANS**

Current estate tax laws are extremely complicated and place many family-owned vineyards and wineries in jeopardy by requiring large cash payments when that business is passed to the next generation. Estate tax law should be modified in order to preserve and grow the equity in these farms and family businesses. An expanded conservation easement donation tax credit will stimulate more participation and protect land for agricultural production. The tax credit should be permanently extended.

Small businesses like the typical American vineyard and winery desperately need a way to provide health care insurance for their employees. Proposals to allow trade associations to provide health insurance would greatly improve the ability of vineyards and wineries to provide health care benefits for their employees.

#### **ESTATE TAX**

Vineyards and wineries are long term commitments requiring sustained reinvestment to develop adequate size and production for long term stability. The period required to accomplish this task usually spans more than one generation. Almost all new vineyard or winery developments are "start-ups" created by families or partnerships.

These businesses take many years to develop, in most cases exceeding the working lifetime of one generation. Very serious liquidity problems, driven by estate or gift taxation, arise when the business must be passed to the next generation. The government requires cash payment to satisfy estate tax obligations while these businesses usually have all their cash resources tied up in growing the business. Banks are extremely reluctant to make loans to wineries secured by inventory, or to vineyards secured by vineyard development. These conditions jeopardize the very survival of many businesses our members have built, over many years, through toil and sweat equity. While Congress passed some relief as part of

the 2001 tax reduction act, these provisions change every year and will eventually expire. Congress should remove the succession burden from family farms and businesses.

### **CONSERVATION EASEMENT**

A conservation easement is a voluntary and legally binding agreement that limits certain uses of land and prevents certain development from taking place on the property in the future. This issue is of critical importance to the agricultural community as it allows farmers to remain in agriculture, rather than selling their land to developers – often the more profitable option.

Two years ago, legislation was approved to expand the caps on charitable deductions for donating a conservation easement on their land to 100% of donor income for farmers and ranchers and 50% of donor income for all others. The previous cap was 30%. The legislation also extended the carry-forward period for such deductions to 16 years from six years. That provision expired at the end of 2007.

Legislation will be introduced this year by Representative Mike Thompson (D–CA) and Representative Eric Cantor (R–VA) to permanently extend this helpful tax credit which allows moderate income donors to get a significant tax benefit from their valuable charitable gift. This tax reform is supported by WineAmerica and the Winegrape Growers of America as a necessary step to ensuring that agricultural lands remain in the hands of farmers and not developers.

### **SMALL BUSINESS HEALTH PLANS**

Legislation should be passed to allow trade associations to offer health insurance to their small-business members through adoption of national standards. These plans should be exempt from costly state mandates, as the ones for large corporations and labor unions currently are.

### **BONUS DEPRECIATION FOR PERMANENT CROPS**

The Economic Stimulus Act of 2008 provided for an additional first year depreciation deduction equal to 50 percent of the basis in the property for capital assets placed in service. Unfortunately, permanent crops, such as trees and vines producing fruits and nuts, were not included in this provision. These crops are not considered “placed in service” in the year planted but rather the year of their first commercially harvestable crop. It was an oversight and not intentional that permanent crops were not included in the bonus depreciation provision.

Farmers can control only when they plant their permanent crops. They cannot control when the crops are commercially harvestable and many of these crops take several years before a harvest. Rep. Mike Thompson (D–CA) and Rep. George Radanovich (R–CA) are introducing legislation to provide fair treatment for permanent crop growers to receive 50% bonus depreciation. Grape growers join with tree fruit, citrus and nut crop groups to support a proposal that would change – for purpose of bonus depreciation – the placed in service date for permanent crops to the date on which the crop is planted. This adjustment would grant the farmers of orchards and vineyards equal treatment as other assets of similar capitalization life that were allowed in the stimulus package.

Many lenders are increasing requirements for equity investment in financing new orchard and vineyard development making investment in promising market opportunities even more difficult. This bonus depreciation incentive will offset some of the distress from the overall financial crisis and allow farmers to respond to market needs, such as changing varieties to better match consumer demand, replacing older varieties to adapt to changing water quality and water availability and updating orchards to more efficient, productive plantings. The bonus depreciation is an incentive that compliments free market investment decisions to stimulate orchard and vineyard development with its associated local buying and job creation in rural communities.

**AGRICULTURAL JOB OPPORTUNITY, BENEFITS, AND SECURITY ACT--“AGJOBS”**

Like many in agriculture, America's wineries and grape growers struggle to find affordable and reliable agricultural labor in a marketplace that is fraught with uncertainty and potential legal hazards. Vineyards are long-term, fairly inflexible investments. Many of the cultural practices for our high-value specialty crops require an inordinate amount of hand labor to achieve the quality expectations of winemakers and consumers. The availability of a reliable, affordable agricultural work force is one consideration for planning a vineyard for mechanization or hand labor.

Under the current H-2A guest worker program, American grape growers do not have the stable workforce necessary to make these key business decisions. A bipartisan and bicameral Congressional coalition reintroduced legislation proposed in the last Congress that addresses legal, ethical and business questions and would have greatly enhanced the long-term stability and competitiveness of America's wineries and grape growers. In spite of the strong efforts of leaders in Congress, including Senators Feinstein and Craig, Representatives Berman and Cannon, and many others, the AgJOBS legislation did not pass the last Congress. With the new Congress the Agricultural Coalition for Immigration Reform (ACIR) is gearing up to promote AgJOBS once again. The effort will be led by Senator Feinstein and Representatives Berman and Putnam.

WineAmerica and Winegrape Growers of America support passage of comprehensive immigration reform containing AgJobs. AgJOBS is a common-sense reform of the existing H-2A guest worker program that will bring stability to the nation's seasonal agricultural work force. Its provisions regularize the permit process and allow workers, who abide by the law, to gain credits towards attaining permanent residency while promoting U.S. border and food security.

A growing number of the leaders in Congress, as well as the President, recognize that the nation's immigration policy is flawed and that America needs immediate reforms that are compassionate, realistic and economically sensible. These reforms must also enhance the rule of law and contribute to national security. AgJOBS has bridged the gap between adversaries who realize that a rare opportunity exists to achieve reforms supportive of these goals, as well the nation's agricultural productivity and food security. While some parties opposed to the bill have stated it grants amnesty, it actually functions as an earned adjustment program in which workers legally and ethically earn their citizenship through years of productive work in the labor force.

AgJOBS is a balanced solution for American agriculture that can be enacted with broad bipartisan support.

### **Key Components of AgJOBS**

**AgJobs** restructures and reforms the current H-2A temporary agricultural worker program. This is accomplished by (1) substantially **streamlining** the program's administrative procedures, including eliminating the labor certification process, (2) reforming the requirements for H-2A employers, including an immediate reduction and gradual elimination of the Adverse Effect Wage Rate, (3) streamlining the process for admission of H-2A aliens, and (4) allowing aliens not currently in the program to acquire H-2A status.

- Employers seeking H-2A foreign workers for seasonal jobs that last 10 months or less must file an application and job offer with the Secretary of Labor. If the application and job offer is in accordance with the program, the Secretary must approve the application. However, employers must seek "qualified U.S. workers prior to the arrival of H-2A foreign workers."
- Workers in a job opportunity covered by an H-2A application must be provided with workers' compensation insurance, and no jobs may be filled by H-2A workers during a strike or labor dispute.
- A user fee paid by agricultural employers would fund the administration of the reformed H-2A program.

- Foreign agricultural workers who can demonstrate that they have worked in agricultural employment 863 hours or 150 or more days during the 24 months ending December 31, 2006, would be granted temporary resident status.
- To obtain permanent resident status a foreign agricultural worker must meet the following requirements:
  - ✓ Work in agriculture at least 100 work days during the five years beginning on the date of enactment of the act, or
  - ✓ Work in agriculture at least 150 work days per year, each year in the three years after enactment, or
  - ✓ Work in agriculture for four years with at least 150 work days in three of those years and 100 work days in the remaining year during the four years after enactment.
- If the worker does not complete the required work days while under temporary resident status, they cannot pursue non-agricultural work in addition to their agricultural duties.

<b>FOOD SAFETY</b>
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Numerous recent salmonella outbreaks, instances of product contamination and subsequent recalls have shone a bright light on the shortcomings of the American food safety system. It is, therefore, admirable that Congress now intends to overhaul the Food and Drug Administration (FDA) in an effort to curtail, if not eliminate altogether, food-borne pathogens and adulteration. With thoughtful policymaking, Congress can help ensure that Americans have a safe, affordable food supply. Notably, however, despite the availability of more than 50,000 wine labels in the U.S. today, the wine industry has not been embroiled in or implicated by a scandal or recall involving adulteration in recent history.

The ongoing congressional efforts to fix the broken food safety system have resulted in several pieces of legislation both in the House and Senate. One such bill, The Food and Drug Administration Globalization Act of 2009, was introduced in late January 2009 in the House Energy & Commerce Oversight and Investigations subcommittee. This bill seeks to provide FDA with adequate funding and authority to ensure the safety of the US food, drug, medical device and cosmetics industries. The bill also proposes that Congress establish an annual fee—currently, applicable to wineries—additional to the fee paid by food facilities (including wineries) as part of their annual bioterrorism registration. An earlier version of the bill proposed a \$2,000 annual fee. A similar bill is being considered by the Senate Committee on Health, Education, Labor and Pensions.

WineAmerica and the Winegrape Growers of America are opposed to this registration fee:

- The wine industry is regulated by the Alcohol & Tobacco Tax & Trade Bureau (TTB) not the FDA. The industry should not be paying fees to an agency that does not have oversight of it.
- The wine industry pays a substantial amount of excise taxes to pay for TTB supervision.
- The wine industry does not pose a high risk for contamination because pathogens do not survive in wine.
- Many wineries are small businesses that would find an annual fee extremely onerous and perhaps fatal.
- It is not an expense that can be readily passed on by wineries to consumers