

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOYBEAN ASSOCIATION, et al.,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Federal Defendants,

and

BASF CORPORATION, et al.,

Intervenor-Defendants.

No. 1:20-cv-03190-RCL

**FEDERAL DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR STAY AND EXTENSION OF DEADLINE TO FILE CERTIFIED LIST
OF ADMINISTRATIVE RECORD CONTENTS**

Federal Defendants, the U.S. Environmental Protection Agency (“EPA”), Administrator Michael S. Regan, and Marietta Echeverria in her official capacity as Acting Director of the Registration Division of EPA’s Office of Pesticide Programs respectfully submit this reply in support of their motion to stay this case pending the D.C. Circuit’s resolution of petitions for review of the same agency actions challenged here. *See* Dkt. No. 64 (“Stay Motion”).

Growers argue that this Court and the D.C. Circuit should simultaneously consider lawsuits raising the same issues, asserted by the same parties, challenging the same agency actions. That approach would be an inefficient use of the Court’s and the parties’ resources. In exercising its discretion to grant a stay, the Court “must weigh competing interests and maintain an even balance between the court’s interest in judicial economy and any possible hardship to the

parties.” *Ctr. for Biological Diversity v. Ross*, 419 F. Supp. 3d 16, 20 (D.D.C. 2019) (quoting *Belize Soc. Dev. Ltd. v. Gov’t of Belize*, 668 F.3d 724, 732-33 (D.C. Cir. 2012) (internal quotation marks omitted). Here, the benefits to judicial economy from staying this case outweigh any potential harm to Growers.

I. Judicial Economy Strongly Favors a Stay.

As Federal Defendants argued in their Stay Motion, it would be inefficient to simultaneously litigate Growers’ challenges to the Registration Decisions in both this Court and the D.C. Circuit. Stay Mot. 5. Federal Defendants have consistently taken the position that subject matter jurisdiction to review the Registration Decisions lies with the federal district courts under 7 U.S.C. § 136n(a). Nonetheless, the D.C. Circuit declined to resolve that issue and is proceeding to briefing on the merits, with the parties required to address subject matter jurisdiction in their briefs. Order, ECF No. 1906276, *Am. Soybean Ass’n v. Regan*, No. 20-1441 (D.C. Cir. July 14, 2021). The parties have submitted a proposed briefing schedule to that court, with briefing scheduled to conclude on July 8, 2022. Resp’ts’ Notice Proposed Briefing Format, ECF No. 1910249, *Am. Soybean Ass’n v. Regan*, No. 20-1441 (D.C. Cir. Aug. 13, 2021). In light of the D.C. Circuit’s decision to proceed with briefing on both subject matter jurisdiction and the merits, proceeding with Growers’ case in this Court is duplicative and unnecessary.

There is no need for this Court or the parties to expend resources addressing the threshold question of subject matter jurisdiction when the D.C. Circuit will do so anyway. Where challenges to the same agency action are pending in both district and appellate courts, district courts commonly stay proceedings to await the appellate court’s decision as to where subject matter jurisdiction lies. *See Catskill Mtns. Chapter of Trout Unlimited v. EPA*, 630 F. Supp. 2d 295, 305 (S.D.N.Y. 2009) (staying district court case pending outcome of appellate case that would “advise this Court as to whether the Eleventh Circuit views itself as having exclusive

jurisdiction over the subject matter of the instant actions”); *Riverkeeper, Inc. v. EPA*, No. 06-cv-12987, 2007 WL 4208757, at *1 (S.D.N.Y. Nov. 26, 2007) (staying district court case so Fifth Circuit could address “whether the courts of appeals have exclusive jurisdiction to review” action); *Oklahoma ex rel. Pruitt v. EPA*, No. 15-cv-0381, 2015 WL 4607903, at *3-4 (N.D. Okla. July 31, 2015) (stating fact that Sixth Circuit was considering challenges to same agency action “weighs heavily in favor of staying this case” because “it would undoubtedly be a waste of judicial resources for plaintiffs’ cases to proceed if it is ultimately determined that jurisdiction is appropriate only in a federal circuit court of appeal”). This Court should do the same.

Growers dismiss the potential for inefficiency or conflicting rulings if this Court proceeds to the merits, arguing that the D.C. Circuit “is unlikely to reach any merits issues.” Growers’ Resp. 3-4. Federal Defendants agree that the D.C. Circuit *should* find that jurisdiction lies in the district courts under 7 U.S.C. § 136n(a) and dismiss the petitions for review. But because a federal court must satisfy itself of its own jurisdiction regardless of the parties’ positions, it is possible that the D.C. Circuit may ultimately disagree.¹ If it does, any briefing and decision on the merits in this case will be rendered moot.

II. Any Potential Harm to Growers Does Not Outweigh the Benefits to Judicial Economy.

The only potential “prejudice” that Growers have identified from staying this case is the possibility that another district court case challenging the Registration Decisions in the District of Arizona might “leapfrog[] this one.” Growers’ Resp. 4. But Growers are incorrect that a stay would leave them “locked in limbo and voiceless” while the Arizona case proceeds. *Id.* at 3. To the contrary, the D.C. Circuit proceedings are moving ahead under a proposed briefing schedule

¹ Growers themselves apparently recognize this possibility, as they have not dismissed their own protective petitions for review in the D.C. Circuit, despite the fact that “everyone challenging the Dicamba Decision agrees[] jurisdiction lies in the district court.” Growers’ Resp. 4.

in which Growers will have an opportunity to present their arguments on both jurisdiction and the merits. As discussed above, while Federal Defendants and Growers both believe that the D.C. Circuit should ultimately find that it lacks subject matter jurisdiction, it is also possible that the D.C. Circuit will disagree and issue a decision on the merits of Growers' challenges to the Registration Decisions.

In any event, to the extent that the relative pace of other litigation is relevant to the stay analysis here, it is far from certain that the District of Arizona case is "proceeding full steam ahead" to adjudication of the merits. Growers' Resp. 1. In fact, the parties in that case are currently engaged in briefing regarding how to govern the case in light of the D.C. Circuit's decision to carry forward the issue of subject matter jurisdiction to merits briefing.

Specifically, the Arizona court issued an order stating that it "intends to address jurisdiction before deciding" the Arizona intervenors' pending motion to transfer the case to this Court, and that it "seeks briefing on the propriety of two courts exercising jurisdiction simultaneously to decide the question of jurisdiction." Order, Dkt. No. 56, *Ctr. for Biological Diversity v. EPA*, No. 20-cv-555 (D. Az. July 28, 2021) ("*CBD v. EPA*"). The court ordered the Arizona plaintiffs to file a "Motion to Determine Jurisdiction." In their motion, the Arizona plaintiffs argued for district court jurisdiction and asked the court to proceed to the merits. Mot. Det. Jurisdiction, Dkt. No. 57, *CBD v. EPA* (D. Az. Aug. 6, 2021). In their response, Federal Defendants also argued for district court jurisdiction, but urged the Arizona court to defer ruling on jurisdiction in light of the pending D.C. Circuit proceedings and to instead either (1) grant the intervenors' motion to transfer or (2) stay the case.² EPA's Resp. Pls.' Mot. Det. Jurisdiction,

² Accordingly, Growers' suggestion that EPA has taken inconsistent approaches in this case and *CBD v. EPA* is incorrect. Growers' Resp. 3.

Dkt. No. 58, *CBD v. EPA* (D. Az. Aug. 20, 2021). The Arizona intervenors (who are identical to Intervenor-Defendants in this case) took the same position as Federal Defendants. Joint Resp. Pls.' Mot. Det. Jurisdiction by Def.-Intervenors, Dkt. No. 59, *CBD v. EPA* (D. Az. Aug. 20, 2021). The Arizona plaintiffs' reply is due on August 27. Thus, the District of Arizona has yet to determine whether and how it will proceed with that case.

III. Federal Defendants Do Not Object to Resolving Their Motion for Partial Dismissal.

Growers argue that if the Court stays this case, it should first decide Federal Defendants' pending motion for partial dismissal. Growers' Resp. 5. Federal Defendants do not object to Growers' request. That motion has been fully briefed, and because the issues raised are not present in the D.C. Circuit proceedings, deciding that motion would not present the same risk of inefficiency or inconsistency as would proceeding with the merits of Growers' challenge.

CONCLUSION

For the foregoing reasons, the Court should grant Federal Defendants' Stay Motion.

Respectfully submitted,

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