Case: 19-72280, 06/04/2021, ID: 12133543, DktEntry: 124-1, Page 1 of 38

Nos. 19-72109 & 19-72280

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

POLLINATOR STEWARDSHIP COUNCIL, AMERICAN BEEKEEPING FEDERATION, and JEFFERY S. ANDERSON,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents,

and

CORTEVA AGRISCIENCE LLC,

Respondent-Intervenor.

On Petition for Review of an Order of the United States Environmental Protection Agency

PETITIONERS' REPLY BRIEF

SURBHI SARANG Earthjustice 48 Wall Street, 19th Floor New York, NY 10005

T: 212.845.7376

E: ssarang@earthjustice.org

GREGORY C. LOARIE Earthjustice 50 California Street, Suite 500 San Francisco, CA 94111

T: 415.217.2000

E: gloarie@earthjustice.org

Counsel for Petitioners



Case: 19-72280, 06/04/2021, ID: 12133543, DktEntry: 124-1, Page 2 of 38

TABLE OF CONTENTS

INTE	RODU	CTION	1		
ARG	UMEN	NT	4		
I.	The Court Should Address the Merits of Beekeepers' FIFRA Claims Before Remanding EPA's Registration Decision				
	A.	EPA :	A Does Not Intend to Reconsider Its Registration Decision4		
	В.		anding EPA's Decision Without Reaching the Merits Would ly Prejudice Beekeepers		
	C.		No Intervening Change in Law Warrants Remanding EPA's Decision Without Reaching the Merits8		
II.	This Is Not an Exceptional Case Warranting Remand Without Vacatur10				
	A.	EPA Committed Many Serious Violations of Law10			
		1.	EPA Still Lacks Sufficient Data to Conduct the Required Assessment of Risk to Bees		
		2.	EPA Lacks Information Necessary to Assess the Cost of Registering Sulfoxaflor's New Uses		
		3.	EPA Failed to Provide the Requisite Public Notice and Opportunity for Comment		
		4.	EPA Violated the "Heart of the ESA."		
	B.	Leaving EPA's Decision in Place During Remand Would Cause Significant Environmental Harm, and Vacating It Will Not21			
		1.	Honey Bee Populations Are More Precarious than Ever22		
		2.	There Is No Basis for EPA's Speculation that Vacatur May Cause Growers to Use Even More Harmful Insecticides24		
			a. EPA Lacks Sufficient Data to Assert Sulfoxaflor Is Better for Bees than the Alternatives It Identifies24		



	b.	Vacatur Is Unlikely to Affect Overall Use of the Alternative Insecticides EPA Identifies	26
C.	Vacatur W	ill Not Cause Significant Economic Disruption	27
CONCLUS	SION		30
FORM 8			31
CERTIFIC	ATE OF SE	RVICE	30

TABLE OF AUTHORITIES

Cases

Alsea Valley All. v. Dep't of Com., 358 F.3d 1181 (9th Cir. 2004)	10
Am. Great Lakes Ports Ass'n v. Schultz, 962 F.3d 510 (D.C. Cir. 2020)	28
Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv., 789 F.3d 1075 (9th Cir. 2015)	.27, 28
Ctr. for Biological Diversity v. EPA, 861 F.3d 174 (D.C. Cir. 2017)	21
Ethyl Corp. v. Browner, 989 F.2d 522 (D.C. Cir. 1993)	5
Humane Soc. v. Locke, 626 F.3d 1040 (9th Cir. 2010)	4
<i>Idaho Farm Bureau Fed'n v. Babbitt</i> , 58 F.3d 1392 (9th Cir. 1995)	21
Karuk Tribe of California v. U.S. Forest Serv., 681 F.3d 1006 (9th Cir. 2012)	20
League of United Latin Am. Citizens v. Regan, 996 F.3d 673 (9th Cir. 2021)	8, 26
Limnia v. Dep't of Energy, 857 F.3d 379 (D.C. Cir. 2017)	5
Love v. Thomas, 858 F.2d 1347 (9th Cir. 1988)	17
In re Nat. Res. Def. Council v. EPA, 956 F.3d 1134 (9th Cir. 2020)	8
Nat'l Family Farm Coal. v. EPA, 960 F.3d 1120 (9th Cir. 2020)3, 9,	



Nat'l Family Farm Coal. v. EPA, 966 F.3d 893 (9th Cir. 2020)	18
Nat'l Fuel Gas Supply Corp. v. Fed. Energy Reg. Comm'n, 899 F.2d 1244	9
Natural Res. Def. Council v. EPA, 676 F. Supp. 2d 307 (S.D.N.Y. 2009)	18
Natural Res. Def. Council v. EPA, 735 F.3d 873 (9th Cir. 2013)	12
Pollinator Stewardship Council v. EPA, 806 F.3d 520 (9th Cir. 2015)	passim
Sierra Forest Legacy v. Sherman, 646 F.3d 1161 (9th Cir. 2011)	21
Skagit Cty. Pub. Hosp. Dist. No. 2 v. Shalala, 80 F.3d 379 (9th Cir. 1996)	4
Standing Rock Sioux Tribe v. Army Corps of Engineers, 985 F.3d 1032 (D.C. Cir. 2021)	10, 18, 20
Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985)	20
United Farm Workers v. EPA, 592 F.3d 1080 (9th Cir. 2010)	8
<i>United States v. Houser</i> , 804 F.2d 565 (9th Cir. 1986)	
Util. Solid Waste Activities Grp. v. EPA, 901 F.3d 414 (D.C. Cir. 2018)	6
Statutes	
7 U.S.C. 136n	4, 7
7 U.S.C. § 136(bb)	3
7 LLS C = 8.136a(c)(4)	18 19



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

