

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL FAMILY FARM  
COALITION, CENTER FOR FOOD  
SAFETY, CENTER FOR  
BIOLOGICAL DIVERSITY, and  
PESTICIDE ACTION NETWORK  
NORTH AMERICA,

*Petitioners,*

v.

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY, and ANDREW  
WHEELER, in his official capacity as  
Administrator,

*Respondents.*

**Case No.**

**PETITION FOR REVIEW**

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Pursuant to Section 16(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136n(b), and Rule 15(a) of the Federal Rules of Appellate Procedure, Petitioners National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America (collectively Petitioners) petition this Court to review the order of the United States Environmental Protection Agency (EPA) extending the conditional

registration for the new uses of the herbicide dicamba for use on genetically engineered cotton and soybean that have been engineered to resist dicamba in thirty-four states. *See* Exhibit A.

Petitioners respectfully petition this Court to hold that: (1) EPA violated its duties under FIFRA in continuing the conditional registration; and (2) EPA violated the Agency's duties under the Endangered Species Act (ESA), 16 U.S.C. §§ 1533-44, by failing to consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service to insure that conditionally registering dicamba for uses on genetically engineered cotton and soybean in the thirty-four states will not jeopardize any listed species or destroy or adversely modify any of their critical habitats, *see* 16 U.S.C. § 1536(a)(2); and (3) to grant relief as may be appropriate.

The challenged order was announced in a document signed on October 31, 2018, EPA Docket No. EPA-HQ-OPP-2016-0187-0968. This current order is intertwined with and extended two earlier registration decisions by EPA over this same pesticide product, decisions then challenged in this Court. *See National Family Farm Coalition, et al. v. U.S. Env'tl. Protection Agency*, No. 17-70196 (9th Cir.). EPA held notice and comment on the first registration decision, but chose not to hold it on the 2017 decision, nor on this latest 2018 decision. This Court subsumed the 2017 decision into the 2016 pre-existing challenge. Petition for

Review, *National Family Farm Coalition v. EPA*, (9th Cir. Filed Jan. 20, 2017) (No. 17-70196), ECF No. 1-5; Petition to Amend, *National Family Farm Coalition v. EPA*, (9th Cir. Filed Nov. 13, 2017) (No. 17-70196), ECF No. 62-1; Order Granting Motion to Amend Petition, *National Family Farm Coalition v. EPA*, (9th Cir. Jan. 22, 2018) (No. 17-70196), ECF No. 68.

Finally, recognizing the short term nature of the EPA's current decision and the obstacles they present to judicial review, yesterday the Court's Order in the above matter directed the Clerk of the Court to set an expedited schedule for briefing and oral argument in this matter. *National Family Farm Coalition v. EPA*, No. 17-70196, 2019 WL 157565, at \*2 (9th Cir. Jan. 10, 2019).

Respectfully submitted this 11th day of January, 2017.

/s/ George A. Kimbrell

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