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12 **THE UNITED STATES DISTRICT COURT**  
 13 **OF ARIZONA**

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 15 Center for Biological Diversity, et al., ) Case No. CV-20-00555-DCB  
 )  
 16 *Plaintiffs,* )  
 )  
 17 *v.* ) **STATUS REPORT**  
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 18 )  
 19 United States Environmental Protection )  
 Agency, et al. )  
 20 )  
 21 *Defendants.* )  
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## STATUS REPORT

Pursuant to the Court's November 15, 2021 Order, ECF No. 64, Plaintiffs submit this report on the status of proceedings in the D.C. Circuit and respectfully seek to end the stay and move forward with briefing this case on the merits.

1. As previously indicated at the motion stage and submitted to this Court, the D.C. Circuit briefing is now commenced and confirms that all parties to that proceeding have now 1) stated their positions that the district court is proper for challenges to EPA's dicamba registration and 2) asked the D.C. Circuit to dismiss the appellate direct petitions for review due to lack of subject matter jurisdiction.

2. First, on May 19, 2022, Petitioners American Soybean Association and Plains Cotton Growers stated in their opening brief's very first line that they "do not believe [the D.C. Circuit] has subject-matter jurisdiction to hear these consolidated petitions challenging EPA's 2020 dicamba registrations and 2022 registration amendments." Opening Br., *Am. Soybean Ass'n v. EPA*, No. 20-1441, at 1-5 (D.C. Cir. May 19, 2022), ECF No. 1947366. They then echoed all parties' prior position in this Court that district courts have jurisdiction here because EPA did not hold a public hearing before issuing the 2020 registrations. *Id.* at 2-4; *id.* at 4 ("because the 2020 registrations and 2022 registration amendments are not orders issued 'following a public hearing,' this Court does not have subject matter jurisdiction to review the registrations in the first instance."); *see also* Pls.' Mot. Jurisdiction 2-4, ECF No. 57. As a result, Petitioners asked that the D.C. Circuit either hold the consolidated cases in abeyance or dismiss them and allow district court cases to proceed. Pets.' Opening Br. 4.

3. Second, on July 20, 2022, EPA agreed in its Response that the district courts have jurisdiction in this case because the 2020 registrations did not follow a public hearing. EPA's Resp., *Am. Soybean Ass'n v. EPA*, No. 20-1441, at 30-40 (D.C. Cir. July 20, 2022), ECF No. 1955828; *id.* at 27 ("All parties agree that this Court lacks subject matter jurisdiction to review the 2020 Registrations and the 2022 Amendments because those

1 actions were not issued following a ‘public hearing’ within the meaning of 7 U.S.C. §  
2 136n(b).”). EPA again stated its position that “Because the statute and case law indicate  
3 that public notice is a minimum requirement for a public hearing under FIFRA, and  
4 because EPA did not provide specific public notice or otherwise hold a public hearing  
5 before issuing the 2020 Registrations or 2022 Amendments, judicial review of these  
6 actions belongs in the district court.” *Id.* at 2. EPA asked the D.C. Circuit to dismiss the  
7 petitions because the D.C. Circuit lacks subject matter jurisdiction to review the 2020  
8 registrations and the 2022 Amendments. *Id.* at 29.

9 4. Third, Intervenors, too, asked the D.C. Circuit to dismiss the case for lack of  
10 jurisdiction. Intervenors’ Resp., *Am. Soybean Ass’n v. EPA*, No. 20-1441, at 16-22 (D.C. Cir.  
11 Aug. 3, 2022), ECF No. 1957784. Intervenors also emphasized that all parties agree the  
12 D.C. Circuit lacks jurisdiction because EPA did not hold a public hearing. *Id.* at 2  
13 (“Intervenors agree with both Growers and Respondents that this Court should not  
14 consider Growers’ challenges in the first instance because the Court lacks statutory subject  
15 matter jurisdiction.”); *id.* at 3 (“all parties agree that EPA acted without a public hearing  
16 because it did not provide public notice.”); *id.* at 14 (“All parties—Growers, Respondents,  
17 and Intervenors—agree that jurisdiction is proper in the district court because the agency  
18 actions at issue here, the 2020 Registrations and the 2022 amended registrations, were not  
19 issued following a ‘public hearing.’”). Intervenors also requested that the D.C. Circuit  
20 dismiss the cases for lack of jurisdiction. *Id.* at 3 (“this Court should dismiss these  
21 consolidated cases for lack of jurisdiction”); *id.* (“Because jurisdiction properly lies in the  
22 district court, Intervenors do not expect this Court to address the merits.”).

23 5. This Court previously stayed the present proceedings due to parallel  
24 challenges to the 2020 Registrations in the D.C. Circuit ginned up by two agrochemical  
25 lobbying groups closely affiliated with the Intervenors. *See* Stay Order, ECF No. 64. All  
26 parties agreed then and again now that district courts are the proper jurisdiction for review  
27 of the 2020 Registrations. *See also* EPA’s Mot. Dismiss, *Am. Soybean Ass’n v. EPA*, No. 20-

1 1441 (D.C. Cir. filed Apr. 23, 2021), ECF No. 1895893; Intervenors' Resp. Mots. 22, Am.  
2 *Soybean Ass'n v. EPA*, No. 20-1441 (D.C. Cir. filed May 17, 2021), ECF No. 1898982.

3 Thus, lifting the stay and allowing the present litigation to proceed is necessary to protect  
4 Plaintiffs' interests, U.S. agriculture, and the environment, while continuing a stay of the  
5 case risks significant harms to U.S. agriculture and the environment. Accordingly, Plaintiffs  
6 respectfully ask that the Court grant Plaintiffs Motion to Amend the Complaint, ECF No.  
7 77, lift the stay, and grant Plaintiffs' Motion to Determine Jurisdiction, ECF No. 57.

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9 Respectfully submitted this 18th day of August, 2022.

10 s/ George Kimbrell

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