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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**
21 **TUCSON DIVISION**

22

23 **Center for Biological Diversity, et al.,**

24 Plaintiffs,

25 v.

26 **United States Environmental Protection**
27 **Agency, et al.,**

28 Federal Defendants, and

29 **Bayer Cropscience LP, BASF Corp., and**
30 **Syngenta Crop Protection, LLC,**

31 Defendant-Intervenors.
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) No. 4:20-cv-00555-DCB

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)
) **EPA'S RESPONSE TO**
) **PLAINTIFFS' STATUS REPORT**

1 In their status report of August 18, ECF. No. 81, Plaintiffs ask the Court to lift the
2 current stay because the parties in *American Soybean Association v. EPA*, No. 20-1441
3 (D.C. Cir.), have filed briefs arguing—among other things—that exclusive jurisdiction
4 over challenges to EPA’s 2020 registrations of three dicamba-based products lies in the
5 district courts, not the courts of appeals. These arguments are not new. Indeed, those
6 parties have consistently made the same jurisdictional arguments in briefs to this Court
7 and in previous briefs in the D.C. Circuit. *See, e.g.*, EPA’s Resp. to Pls.’ Mot. to
8 Determine Jurisdiction, ECF No. 58; Intervenor’s Joint Resp. to Pls.’ Mot. to Determine
9 Jurisdiction, ECF No. 59; Resp’ts Reply in Supp. of Mot. to Dismiss at 1, *Am. Soybean*
10 *Ass’n*, No. 20-1441 (D.C. Cir. June 1, 2021), Doc. No. 1900903; Intervenor’s Consol.
11 Resp. at 22, *Am. Soybean Ass’n*, No. 20-1441 (D.C. Cir. May 17, 2021), Doc. No.
12 1898982; Grower Pet’rs’ Mot. to Govern at 2, 5, *Am. Soybean Ass’n*, No. 20-1441 (D.C.
13 Cir. Apr. 23, 2021), Doc. No. 1895857. The parties’ continued adherence to long-held
14 positions does nothing to undermine the rationale for the current stay.

15 Though Plaintiffs now agree that district court jurisdiction is proper, they
16 previously opposed motions to dismiss or stay the appellate court case. At that time,
17 Plaintiffs told the D.C. Circuit that the “law of this Circuit (and others) is clear: the
18 overwhelming administrative record in this case provides the courts of appeals with
19 jurisdiction.” Pet’rs’ Combined Opp’n to Mot. to Dismiss & Mots. to Stay at 13, *Am.*
20 *Soybean Ass’n v. EPA*, No. 20-1441 (D.C. Cir. May 17, 2021), Doc. No. 1898988. EPA
21 disagrees, but as it acknowledged in previous filings, the jurisdictional question is not
22 free from doubt. EPA’s Resp. to Pls.’ Mot. to Determine Jurisdiction, ECF No. 58;
23 EPA’s Opp. to Pls. Mot. to Lift Stay, ECF No. 67.

24 This Court reasonably stayed this action to allow the D.C. Circuit to determine
25 whether it believes that the courts of appeals have exclusive jurisdiction over this matter.
26 Order, ECF No. 65; Order, ECF No. 74. Although the existing parties to the D.C. Circuit
27 litigation agree that the courts of appeals lack original jurisdiction, the court must make
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1 that determination for itself. *See NetworkIP, LLC v. F.C.C.*, 548 F.3d 116, 120 (D.C. Cir.
2 2008) (“subject matter jurisdiction may not be waived,” nor can the parties “confer
3 subject-matter jurisdiction” on a federal court).

4 The only update to speak of in *American Soybean Association* is that the parties
5 have filed briefs in accordance with the D.C. Circuit’s scheduling order of March 29,
6 2022. Under that order, final form briefs will be submitted next month, on September 28.
7 Because this update has no bearing on the rationale underpinning the current stay, it does
8 not warrant lifting that stay.

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11 DATED this 30th day of August, 2022.

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13 /s/ Andrew S. Coghlan
14 ANDREW S. COGHLAN
15 *Attorney for Federal Defendants*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 30, 2022, I filed the foregoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Andrew S. Coghlan

ANDREW COGHLAN

Attorney for Federal Defendants