Opinion and Mandate Issued on June 3rd, 2020

No. 19-70115

Before: Michael Daly Hawkins, M. Margaret McKeown, and
William A. Fletcher, Circuit Judges

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL FAMILY FARM COALITION, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents,

and

MONSANTO COMPANY,

Intervenor-Respondent.

ON PETITION FOR REVIEW FROM THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

PETITIONERS' OPPOSITION TO PROPOSED-INTERVENORS' EMERGENCY MOTIONS TO INTERVENE

CENTER FOR FOOD SAFETY
George A. Kimbrell
Sylvia Shih-Yau Wu
Amy van Saun
2009 NE Alberta St., Suite 207
Portland, OR 97211
T: (971) 271-7372
gkimbrell@centerforfoodsafety.org
swu@centerforfoodsafety.org
avansaun@centerforfoodsafety.org

CENTER FOR BIOLOGICAL DIVERSITY
Stephanie M. Parent
PO Box 11374
Portland, OR 97211
T: (971) 717-6404
sparent@biologicaldiversity.org

Counsel for Petitioners

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

I. Proposed Intervenors Fail to Meet the Requisite Test for Intervention. 3

A. Proposed Intervenors' Motions Are Not Timely. 3

B. Proposed Intervenors' Interests Are Adequately Represented By Existing Parties. 13

II. The Court Should Also Decline Permissive Intervention. ... 16

CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Adams v. United States,
449 F. App'x 653 (9th Cir. 2011) 11

Arakaki v. Atano Cayetano,
324 F.3d 1078 (9th Cir. 2003) 13, 14

Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.,
309 F.3d 1113 (9th Cir. 2002) 3

Calvert v. Huckins,
109 F.3d 636 (9th Cir. 1997) 12

Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.,
2005 WL 6789301 (N.D. Cal. May 31, 2005) 18

Donnelly v. Glickman,
159 F.3d 405 (9th Cir. 1998) 16

Drakes Bay Oyster Co. v. Salazar,
2013 WL 451813 (N.D. Cal. Feb. 4, 2013) 12

Golden Wolf Partners v. BASF Corp., 2010 WL 5173197
(E.D. Cal. Dec. 13, 2010) 11

League of United Latin Am. Citizens v. Wilson,
131 F.3d 1297 (9th Cir. 1997) .... *passim*

Lewis v. First Am. Title Ins. Co.,
2010 WL 3735485 (D. Idaho Aug. 5, 2010) 4

Menominee Indian Tribe of Wisconsin v. Thompson,
164 F.R.D. 672 (W.D. Wis. 1996) 17

Federal Cases (Cont'd) **Page(s)**

Nat'l Family Farm Coal. v. EPA,
No. 19-70115, 2020 WL 2901136 (9th Cir. 2020) .... *passim*

Nw. Forest Res. Council v. Glickman,
82 F. 3d 825 (9th Cir. 1996).. 15, 16

Perry v. Proposition 8 Official Proponents,
587 F.3d 947 (9th Cir. 2009)... 13, 17, 18

Spangler v. Pasadena City Bd. of Educ.,
552 F.2d 1326 (9th Cir. 1977).. 16

Sw. Ctr. for Biological Diversity v. Berg,
268 F.3d 810 (9th Cir. 2001).. 2

United States v. Alisal Water Corp.,
370 F.3d 915 (9th Cir. 2004).. 3

United States v. Oregon,
913 F.2d 576 (9th Cir. 1990).. 6

United States v. State of Washington,
86 F.3d 1499 (9th Cir. 1996)... 4, 13

Wilderness Soc. v. U.S. Forest Serv.,
630 F.3d 1173 (9th Cir. 2011).. 3

Rules

Federal Rule of Appellate Procedure Rule 15(d)............................ 4, 5, 10

Federal Rule of Civil Procedure 24 .... 2, 3, 16

Circuit Rule 15-1... 5

INTRODUCTION

More than one year and five months after Petitioners filed the present expedited litigation, BASF Corporation (BASF) and E.I. du Pont de Nemours and Company (Corteva) (collectively, Proposed Intervenors) now seek intervention. *See* ECF 1-6 (Petition for Review filed Jan. 11, 2019). Proposed Intervenors slept on their rights to intervene, even though they had every reason to know that this Court's adjudication of EPA's 2018 registration decision could affect the registration basis for their pesticide products.

Even after the Court issued its Order rejecting EPA's argument that the case was limited to just XtendiMax and vacating all three pesticide use approvals, Proposed Intervenors waited yet another nine days; they only leaped into action after Petitioners returned to this Court seeking enforcement of its Order against EPA's brazen attempt to keep Proposed Intervenors' products in use. ECF 127-3.

Proposed Intervenors are far too late. Huffing and puffing aside, Proposed Intervenors have failed to identify a single interest that is not adequately represented by EPA (or Intervenor Monsanto) at this juncture, when the only question before this Court narrowly concerns

EPA's improper attempt to revise this Court's Order and extend continued OTT new uses on cotton and soy without a new registration despite vacatur. Proposed Intervenors have been fine with letting EPA do their bidding throughout the course of this case, they should not be allowed to participate now only to cause delay and prejudice to Petitioners. Because Proposed Intervenors fail the tests for intervention, both as of right and by permission, the Court should deny their motions.

ARGUMENT

The Ninth Circuit evaluates whether to allow intervention under the standards that govern intervention in district courts under Federal Rule of Civil Procedure 24. *See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001). Proposed Intervenors fail to meet the tests for either intervention as of right or permissive intervention because their eleventh-hour emergency intervention motion is tardy, their interests are adequately represented by EPA and Monsanto, and because allowing their intervention would only cause further delay in this case and unduly prejudice Petitioners.

I. Proposed Intervenors Fail to Meet the Requisite Test for Intervention.

This Circuit applies a four-part test to motions for intervention as a matter of right:

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Fed. R. Civ. P. 24(a)(2); *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc). All four requirements must be met to allow intervention. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004).

A. Proposed Intervenors' Motions Are Not Timely.

Timeliness is "the threshold requirement" for intervention, whether as of right or permissively. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). Timeliness is dependent on three factors: (1) "the stage of the proceeding at which an applicant seeks to intervene;" (2) "the reason for and length of the delay;" and (3) "the prejudice to other parties." *Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113,

1119 (9th Cir. 2002). "[A]ny substantial lapse of time weighs heavily against intervention." *United States v. State of Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996).

First, there can be no later stage to intervene in a legal proceeding than here, where more than eighteen months have lapsed since Petitioners filed this expedited petition for review, and where this Court has already issued its opinion making abundantly clear that the scope of review included Petitioners' products, vacating their OTT uses, and expeditiously issued the mandate on the same day.

Ninth Circuit courts have found motions to intervene to lack timeliness at much earlier stages of litigation. *See, e.g., League of United Latin Am. Citizens*, 131 F.3d at 1302-03 (that the case was still in pretrial stage was not dispositive on timeliness of motion to intervene); *Lewis v. First Am. Title Ins. Co.*, 2010 WL 3735485, at *2 (D. Idaho Aug. 5, 2010) (rejecting motion to intervene as untimely even though the court had not reached the merits of plaintiffs' claims). Proposed Intervenors admit that Rule 15(d) of the Federal Rule of Appellate Procedure, governing timing of petitions for review of agency orders such as this, direct that any motion to intervene "must be filed

within 30 days after the petition for review is filed." Fed. R. App. P. 15(d); Circuit Rule 15-1. Petitioners are far too late.

Proposed Intervenors rely on *Day v. Apoliona*, in which this Court granted the amicus State of Hawaii's motion to intervene after the panel decision was issued, but that case is inapplicable. 505 F.3d 963, 966 (9th Cir. 2007); ECF 129-1 at 11; ECF 130-1 at 13. There, the State of Hawaii, which had participated as amicus from the inception of the case at the district court level and again at the appellate level, moved to intervene so it could petition for panel rehearing after a decision was issued. In allowing intervention at that late stage, the court emphasized specifically the fact that Hawaii had not "ignored the litigation or held back from participation to gain tactical advantage." *Day*, 505 F.3d at 966. Rather, the intervenor had "sought amicus status, and—singlehandedly—argued a potentially dipositive issue in [the] case to the district court and [the] panel." *Id.* This Court found intervenor's participation particularly helpful since the existing defendants were "unwilling[ ] … to take a position on [that] issue." *Id.* at 965. No such compelling reasons exist here, nor do Proposed Intervenors offer any. Neither BASF nor Corteva sought to participate in any way before this

Court, and neither the motion nor their proposed opposition to Petitioners' Emergency Motion put forth any argument, let alone any dispositive one, that are not presented by EPA and Monsanto. *See infra* pp. 13-16.

Second, Proposed Intervenors entirely failed to justify their dilatory motions. Proposed Intervenors claim that they thought the Petition for Review only concerned XtendiMax, pointing to this Court's order for supplemental briefing and offering nothing more beyond simply parroting arguments that have already been made by Monsanto and EPA, and that were squarely rejected by this Court. ECF 129-1 at 8; ECF 130-1 at 6-7; *Nat'l Family Farm Coal. v. EPA*, No. 19-70115, 2020 WL 2901136, at *8 (9th Cir. 2020) (*NFFC*). But this Circuit has instructed that an applicant moving to intervene must act timely when he "knows or has reason to know that his interests *might* be adversely affected by the outcome of the litigation." *United States v. Oregon,* 913 F.2d 576, 589 (9th Cir. 1990) (emphasis added) (quoting *United States v. City of Chicago*, 870 F.2d 1256, 1263 (7th Cir. 1989)). Here, the Petition expressly stated that Petitioners sought review of EPA's order granting the registration for all "the new uses" being approved pursuant to the

registration, and referred to and attached as its only exhibit, EPA's October 31, 2018 registration decision document entitled: "Registration Decision for the Continuation of Uses of Dicamba on Dicamba Tolerant Cotton and Soybean," uses that Proposed Intervenors specifically applied for. *NFFC,* 2020 WL 2901136, at *8; ECF 1-7 (reproduced at ER1-24) (announcing approval of "requests by Bayer CropScience (formerly Monsanto Company), Corteva (formerly DuPont), and BASF to amend their existing conditional registrations that contain expiration dates of November 9, 2018, and December 20, 2018, respectively. … Three registrations, EPA Registration Number 352-913, 524-617, and 7969-345, are impacted by this decision."); ECF 1-6 at 1-2. If it was unclear then that this Petition for Review might implicate Proposed Intervenors' interests, as this Court pointed out, Petitioners' opening brief (filed August 13, 2019, ten months before Proposed Intervenors' present motion), also clearly states: "This petition seeks review of the October 31, 2018 decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the

pesticide dicamba on dicamba-resistant cotton and soybean[.]" *NFFC*, 2020 WL 2901136, at *8.[1]

Proposed Intervenors even admit that the parties to this litigation repeatedly made reference to their interests being at issue in this action. BASF acknowledges in its Motion that Respondents' principal brief references the 2018 registration of Engenia and FeXapan, *see* ECF 48 at 12-13 n.3, in response to Petitioners' reference to all three registrants in its brief, *see* ECF 35 at 2 n.4. ECF 130-1 at 3. Corteva's Motion also recognized that Petitioners' brief, ECF 35 at 2 n.4, and Respondents' brief, ECF 48 at 12-13 n.3, both referred to the October 31, 2018 decision as also encompassing the other two OTT dicamba registrations.

Even if they somehow had reason to believe that Petitioners only challenged EPA's OTT use approval for Monsanto's XtendiMax,[2]

[1] Nor did Petitioners try to "hide the ball," as Proposed Intervenors suggest, ECF 130-1 at 4; ECF 129-1 at 9. As this Court found, Petitioners have consistently presented their challenge as a challenge against the OTT new use approval encompassing *all three* pesticide products. *NFFC*, 2020 WL 2901136, at *8 (emphasis added); *see* ECF 1-6; ECF 115-1 at 1-3.

[2] Proposed Intervenors point out that their products were not named in Petitioners' Petition for Review, ECF 129-1; ECF 130-1, but as this

Proposed Intervenors' claim that they therefore had no valid interest to seek intervention is still a complete lie. As this Court stated, the "administrative record produced by the EPA includes materials concerning all three products," and "[m]ost important, the registration decision, including its risk assessments and cost-benefit analysis, concerned OTT dicamba products generally and was not registrant-specific." *NFFC*, 2020 WL 2091136, at *9.[3] Proposed Intervenors had every reason to know that this Court's review of EPA's risk assessments and decision-making documents—the same documents EPA relied on to approve OTT uses of their pesticide products—may affect them. *See id.* ("Indeed, the EPA's decision document specifies that '[t]hree registrations ... are impacted by this decision.").

Court in its June 3, 2020 decision noted, "even … Monsanto admitted in its supplemental brief to [the Court]" that "while the 'petition for review did not mention the Engenia or FeXapan registration orders[,] [s]trictly speaking, it did not mention the XtendiMax registration order either.'" ECF 125 at 24 (quoting ECF 116 at 6).

[3] For this reason, BASF's argument that there are a handful of studies specific to Engenia pesticide that were not part of the administrative record of this case is meritless. This Court squarely rejected EPA's same argument. *See id.* (rejecting EPA's argument that "[t]hese other registrations have administrative records that may overlap with, but are distinct from the administrative record for XtendiMax").

And, Proposed Intervenors have no explanation as to why they did not move to intervene when this Court directly posed the question of whether their pesticide registrations were part of the present petition for review nearly a month and a half ago, on April 29, 2020, directing supplemental briefing from all parties specifically to determine whether the scope of Petitioners' challenge extends to Engenia and FeXapan. ECF 111. Proposed Intervenors admit that they were aware that the panel directed supplemental briefing on this question. ECF 130-1 at 3; ECF 129-1 at 9. So, even assuming that the 30-day clock for intervention under FRAP 15(d) did not start until the Court issued its Order requesting supplemental briefing on April 29, 2020,[4] Proposed Intervenors' motions 44-days later, after this Court's issuance of Mandate, are still too late.

Proposed Intervenors offer no justification for their months of inaction except feebly claiming that "it would be unreasonable to hold

[4] Proposed Intervenor's claim that the 30-day clock began when Petitioners filed their supplemental brief on May 13, 2020, is simply absurd. If Proposed Intervenors believe that their registrations should not be subject to this Court's review, as they insist now, they could have sought intervention and submit their arguments when the Court asked that very question. ECF 130-1 at 11; ECF 129-1 at 9.

that a potential intervenor must read every filing on a docket even when the petition itself does not implicate its interest." ECF 130-1 at 11; *cf.* ECF 1-7 at 3 (EPA's 2018 registration decision that explicitly named Proposed Intervenors, and is referred to and attached as Petitioners only exhibit). Proposed Intervenors are global pesticide companies who regularly participate in EPA's pesticide registrations and legal challenges to the use of their pesticide products. *See, e.g.*, *Golden Wolf Partners v. BASF Corp.*, 2010 WL 5173197, at *1 (E.D. Cal. Dec. 13, 2010) (challenging BASF fungicides for damage to crops); *Adams v. United States*, 449 F. App'x 653, 657 (9th Cir. 2011) (challenging DuPont (or Corteva) herbicide drift for damage to crops). Proposed Intervenors are currently represented by seven of BASF and four of Corteva's counsel just for their present motions to intervene. It is hard to imagine proposed intervenors with more legal resources to monitor and timely intervene to protect their interests.

Third, Proposed Intervenors cannot intervene at this late stage in the proceeding without causing undue delay and prejudice to Petitioners. As made clear throughout this expedited litigation and in Petitioners' Emergency Motion, immediate enforcement of this Court's

Mandate is necessary to prevent harm to U.S. agriculture and wildlife from dicamba use this season. ECF 127-1 at 5-6. *Calvert v. Huckins*, 109 F.3d 636, 638 (9th Cir. 1997) (stating that "postjudgment intervention is generally disfavored because it creates delay and prejudice to existing parties."). Proposed Intervenors have made plain their intent to delay this case ruling in their proposed opposition to Petitioners' Emergency Motion,[5] where they requested that this Court recall its mandate and delay its issuance until the period for petition for rehearing or certiorari has run. *See* ECF 145 at 18. Intervention this late in the litigation would cause unreasonable delay, prejudice Petitioners, and result in significant harm to agriculture, human health and the environment, and threatened and endangered species.

---

[5] Proposed Intervenor BASF filed the proposed opposition brief before this Court even ruled on their right to participate, even though the Court's Order on Petitioners' Emergency Motion only directed Petitioner and *Respondent EPA* to submit briefing. This Court should reject Proposed Intervenors' opposition brief and disregard it entirely. *See Drakes Bay Oyster Co. v. Salazar*, 2013 WL 451813, at *9 n.6 (N.D. Cal. Feb. 4, 2013) (agreeing "that [p]roposed [i]ntervenors should have sought leave of court prior to filing their proposed opposition," denying intervention, and treating it as an amicus brief where proposed intervenors had timely sought intervention one week after the case was filed).

Because Proposed Intervenors' motions to intervene are too late, this Court need not reach any of the remaining three factors in the intervention-as-of-right test, and should deny their motions. *State of Washington*, 86 F.3d at 1503 (citing *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990), *cert. denied*, 501 U.S. 1250 (1991)).

B. Proposed Intervenors' Interests Are Adequately Represented By Existing Parties.

In examining the adequacy of representation factor, this Court considers three questions:

> (1) whether the interests of a present party is such that it will undoubtedly make all the proposed intervenor's arguments; (2) whether the present party is capable and willing to make such argument; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Arakaki v. Atano Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003) (citing *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986)). "The 'most important factor' to determine whether a proposed intervenor is adequately represented by a present party to the action is 'how the [intervenor's] interest compares with the interest of existing parties.'" *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950-51 (9th Cir. 2009) (quoting *Arakaki*, 324 F.3d at 1086) (internal citation

omitted); *see also Arakaki*, 324 F.3d at 1086 ("If the applicant's interest is identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation."). It is presumed that the government adequately represents the applicant when both parties share the same interest. *See Arakaki*, 324 F.3d at 1086 (citing *United States v. City of Los Angeles*, 288 F.3d, 391, 401 (9th Cir. 2002)).

Proposed Intervenors have failed to identify any reason why EPA and Monsanto would not adequately represent their interests at this juncture, when the only question before the Court is whether EPA is faithfully executing this Court's Mandate. If anything, EPA's registration decision and its latest administrative order to override this Court make abundantly clear that it is more than willing and ready to do Proposed Intervenors' bidding. *See* ECF 35 at 9 & n.10 (Petitioners' citing to incidents where Monsanto and the pesticide industry influenced EPA's decision to reject experts' recommendations to prohibit use after a spring "cutoff date" to mitigate vapor drift damage because the industry opposed it); ECF 127-1.

Nor can Proposed Intervenors point to any differences between their interests and those of Intervenor Monsanto, other than stating the obvious fact that they are different pesticide companies with different pesticide products. There is no difference here. All three products are considered the same OTT dicamba uses in EPA's October 31, 2018 registration decision, were approved with identical label use instructions and outstanding data requirements under the same FIFRA conditional new use approval authority, and are all subject to this Court's vacatur (and are even treated the same by EPA in its unlawful administrative order). Proposed Intervenors' motions fail to demonstrate inadequate representation. *See Nw. Forest Res. Council v. Glickman*, 82 F. 3d 825, 838 (9th Cir. 1996) (denying the applicant's motion for intervention as of right where the only "disagreement [between them was] minor . . . [and] reflect[ed] only a difference in strategy."); *League of United Latin Am. Citizens*, 131 F.3d at 1306 ("When a proposed intervenor has not alleged any substantive disagreement between it and the existing parties to the suit, and instead has vested its claim for intervention entirely upon a

disagreement over litigation strategy or tactics, courts have been hesitant to accord the applicant full-party status").

II. The Court Should Also Decline Permissive Intervention.

Permissive intervention is also unwarranted. Permissive Intervention may be granted where an applicant "shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Nw. Forest Res. Council*, 82 F.3d at 839 (citing Fed. R. Civ. P. 24(b)(2)). "Even if an applicant satisfies the threshold requirements, the district court has discretion to deny permissive intervention." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* (citing Fed. R. Civ. P 24(b)(3)). Additionally, the court may also consider other factors, including "the nature and extent of the intervenors' interest" and "whether the intervenors' interests are adequately represented by other parties." *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

As detailed above, Proposed Intervenors' motions are untimely. *See supra* pp. 3-13. Timeliness in the context of permissive intervention is analyzed even "more strictly" than that of intervention as of right. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997). On this factor alone, the Court should decline permissive intervention.

Other factors, including adequate representation and potential delay and prejudice, also weigh heavily in favor of denying Proposed Intervenor's request for permissive intervention. "When intervention of right is denied for the proposed intervenor's failure to overcome the presumption of adequate representation … *the case for permissive intervention disappears*." *Menominee Indian Tribe of Wisconsin v. Thompson*, 164 F.R.D. 672, 678 (W.D. Wis. 1996) (emphasis added); *Perry*, 587 F.3d at 955 ("The district court's denial of intervention based on the identity and interests of [existing parties] and [their] ability to represent those interests adequately is supported by our case law on intervention in other contexts.") (citing *United States ex rel. Reichards v. De Leon Guerrero*, 4 F.3d 749, 756 (9th Cir. 1993) (denial of permissive intervention based on finding that "the government party to

the case made the same arguments as the taxpayer intervenors, and the government party would adequately represent the intervenors' privacy interests.")). The Ninth Circuit in *Perry* also affirmed the district court's decision to deny intervention based on potential delay to the proceedings. As detailed above, *supra* pp. 13-16, Proposed Intervenors have not demonstrated any reason why or how their interests would not be adequately represented by EPA and Monsanto, and have only evinced their intent to cause further delay, despite this Court's *sua sponte* expediting the present litigation and Petitioners' filing of an emergency motion to enforce this Court's Mandate.

For these reasons, the Court should deny permissive intervention. However, if the Court is inclined to grant permissive intervention, based on the adequacy of representation by EPA and Monsanto, the Court should still disregard and reject BASF's Proposed Opposition to Petitioners' Emergency Motion, ECF 145, and deny Corteva's request to file a joinder should the Court grant intervention, ECF 148. Instead, the Court should limit Proposed Intervenors to file a single, joint brief with EPA and Monsanto, should the Court require any further briefing in this case. *See, e.g.*, *Ctr. for Biological Diversity v. U.S. Fish & Wildlife*

Serv., 2005 WL 6789301, at *7 (N.D. Cal. May 31, 2005) ("[T]he Court orders that intervenors will join in common briefing and will be jointly represented at hearings and other court proceedings by a single counsel. Intervenors' participation is limited to the four claims now pending; they may not re-litigate the fifth cause of action that has been dismissed.")

CONCLUSION

For these reasons, Petitioners respectfully request this Court deny the Motions to Intervene by Proposed Intervenors BASF and Corteva, and disregard and reject Proposed Intervenor BASF's proposed opposition to Petitioners' Emergency Motion.

Respectfully submitted this 17th day of June, 2020.

/s/ George A. Kimbrell
George A. Kimbrell
Sylvia Shih-Yau Wu
Amy van Saun
2009 NE Alberta St., Suite 207
Portland, OR 97211
T: (971) 271-7372
gkimbrell@centerforfoodsafety.org
swu@centerforfoodsafety.org
avansaun@centerforfoodsafety.org

Stephanie M. Parent
PO Box 11374
Portland, OR 97211
T: (971) 717-6404
SParent@biologicaldiversity.org

Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook font, a proportionally spaced font.

I further certify that this brief complies with Rule 27(d)(2) of the Federal Rules of Appellate Procedure, because it contains 3,698 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

s/ George A Kimbrell

GEORGE A. KIMBRELL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: http://www.ca9.uscourts.gov/forms/form15instructions.pdf

9th Cir. Case Number(s) 19-70115

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

☐ I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

☐ I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants *(list each name and mailing/email address)*:

Description of Document(s) *(required for all documents)*:

Petitioners' Opposition to Proposed-Intervenors' Emergency Motions to Intervene

Signature s/ George A. Kimbrell **Date** Jun 17, 2020

(use "s/[typed name]" *to sign electronically-filed documents)*

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov