

ENDORSED
FILED
ALAMEDA COUNTY

JUN 13 2018

CLERK OF THE SUPERIOR COURT
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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF ALAMEDA

12 RAPTORS ARE THE SOLUTION, a non-profit)
association and project of Earth Island Institute, a)
13 non-profit corporation;)

14 Petitioner)

15 v.)

16 CALIFORNIA DEPARTMENT OF PESTICIDE)
REGULATION,)

17 Respondent.)
18)

19 BELL LABORATORIES, INC, a Wisconsin)
Corporation; HACCO, INC., a Michigan)
20 Corporation; LIPHATECH, INC, a Wisconsin)
Corporation; RECKITT BENCKISER LLC, a)
21 Delaware Corporation; BONIDE PRODUCTS,)
INC., a New York Corporation;)
22 WOODSTREAM CORPORATION, a)
Pennsylvania Corporation; SYNGENTA CROP)
23 PROTECTION, INC., a Delaware Corporation;)
FARNAM COMPANIES, INC., a Delaware)
24 Corporation; J.T. EATON & CO. INC., an Ohio)
Corporation; and DOES 1- through 100,)

25 Real Parties In Interest.)
26 _____)
27)
28)

Case No. RG18908605

**VERIFIED PETITION FOR WRIT
OF MANDATE**

**[Action Contains Claims under the
California Environmental Quality Act,
Pub. Res. Code § 21001 et seq.]**

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I. INTRODUCTION

1. Petitioner Raptors Are The Solution (“Petitioner”) challenges Respondent California Department of Pesticide Regulation’s (“Respondent” or “DPR”) determination to renew the registrations of seven rodenticides without initiating the reevaluation process pursuant to state law (hereinafter, the “Project”). The seven rodenticides are: (1) brodifacoum; (2) bromadiolone; (3) difethialone; (4) difenacoum; (5) diphacinone; (6) chlorophacinone; and (7) warfarin.

2. These rodenticides have been implicated in numerous poisonings of non-target wildlife including raptors (owls, hawks, eagles etc), bears, bobcats, mountain lions and a host of other wildlife that prey on target wildlife species such as rats, mice and gophers that have ingested the rodenticides. Non-target wildlife harmed by rodenticides include species of special concern as well as species listed under the federal and/or state Endangered Species Acts.

3. Petitioner challenges Respondent’s approval of the Project as contrary to the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000 *et. seq.* Respondent took a discretionary action without adequately assessing the potentially significant impacts of continued use of the rodenticides on non-target wildlife, without assessing the feasibility of non-harmful alternatives, without consulting with the trustee agency, the California Department of Fish and Wildlife (“DFW”), and without responding to Petitioner’s comments provided in the administrative proceedings below. *See* Pub. Res. Code § 21080.5.

4. Petitioner also challenges the District’s approval of the Project as contrary to state law, including but not limited to requirements that Respondent initiate reevaluation of pesticides where there is evidence showing the likelihood of adverse wildlife impacts due to contamination, to make findings that support its decision, and to consult with DFW as part of its decision-making process. *See* Food & Ag. Code § 12824; 3 Cal. Code Reg. §§ 6215, 6220, 6222(a); 6252.

5. Petitioner seeks a writ of mandate directing Respondent to set aside its determination to renew registration of these rodenticides without a reevaluation.

II. PARTIES

6. Petitioner Raptors Are The Solution is a project of Earth Island Institute, a 501(c)(3) nonprofit organization. Petitioner educates citizens about the ecological role of birds of prey in urban and wild

1 areas and about the danger they face from the widespread use of rodenticides. Petitioner partners with
2 other non-profits, agencies, scientists, cities, and others to work toward eliminating toxic rodenticides
3 from the food web for non-target wildlife. Petitioner has its principal place of business in Berkeley
4 California, in Alameda County.

5 7. Respondent California Department of Pesticide Regulation is an agency of the State of
6 California located in Sacramento, California and is the lead agency with respect to registering
7 rodenticides in California.

8 8. Real party in interest Bell Laboratories, Inc, is a Wisconsin corporation with its principal
9 office in Madison, Wisconsin and is a registrant in California for registered rodenticide products
10 containing the active ingredients brodifacoum, bromadiolone, and diphacinone.

11 9. Real party in interest Hacco, Inc, is a Michigan corporation with its principal office in
12 Randolph, Wisconsin and is a registrant in California for registered rodenticide products containing
13 the active ingredients brodifacoum, bromadiolone, diphacinone and warfarin.

14 10. Real party in interest Liphatech, Inc, is a Wisconsin corporation with its principal office in
15 Milwaukee, Wisconsin and is a registrant in California for registered rodenticide products containing
16 the active ingredients bromadiolone, difethialone and chlorophacinone.

17 11. Real party in interest Reckitt Benckiser LLC, is a Delaware corporation with its principal
18 office in Parsippany, New Jersey and is a registrant in California for registered rodenticide products
19 containing the active ingredients brodifacoum, difethialone and diphacinone.

20 12. Real party in interest Bonide Products, Inc, is a New York corporation with its principal office
21 in Oriskany, New York and is a registrant in California for registered rodenticide products containing
22 the active ingredients chlorophacinone and warfarin.

23 13. Real party in interest Woodstream Corporation, is a Pennsylvania corporation with its
24 principal office in Lititz, Pennsylvania and is a registrant in California for registered rodenticide
25 products containing the active ingredient difenacoum.

26 14. Real party in interest Syngenta Crop Protection, Inc. is a Delaware corporation with its
27 principal office in Greensboro, North Carolina and is a registrant in California for registered
28 rodenticide products containing the active ingredient brodifacoum.

1 15. Real party in interest Farnam Companies, Inc. is a subsidiary of Central Garden & Pet Co.,
2 a Delaware corporation with its principal office in Walnut Creek, California and is a registrant in
3 California for registered rodenticide products containing the active ingredient bromadiolone and
4 diphacinone.

5 16. Real party in interest J.T. Eaton & Co. Inc. is an Ohio corporation with its principal office in
6 Twinsburg, Ohio and is a registrant in California for registered rodenticide products containing the
7 active ingredient bromadiolone and diphacinone.

8 17. The true names and capacities, whether individual, corporate or otherwise, of DOES 1 through
9 100, are unknown to Petitioner who therefore sue said real parties in interest by such fictitious names
10 and will seek leave to amend this Petition for Writ of Mandate when they have been ascertained.

11 **III. JURISDICTION AND EXHAUSTION OF REMEDIES**

12 18. Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure §1084
13 *et seq.* and California Public Resources Code §§ 21080.5(g), 21168 and/or 21168.5.

14 19. Venue is proper as Respondent is a state agency located in Sacramento and the Attorney
15 General has an office in Oakland California, located in Alameda County. Code Civ. Proc. § 401(1).

16 20. Petitioner has performed all conditions precedent to filing this instant action and has
17 exhausted any and all available administrative remedies to the extent required by law. Petitioner
18 provided written comments to Respondent during the administrative process related to each of the
19 claims raised in this Petition.

20 21. On June 12, 2018, Petitioner's attorney faxed a Notice of Commencement of Action letter
21 pursuant to Public Resources Code § 21167.5 to Respondent informing Respondent of Petitioner's
22 intent to file a legal action in this case challenging the Respondent's approval of the Project. (*See*
23 *Exhibit 1, attached hereto.*)

24 22. On June 13, 2018, Petitioner's attorney served a copy of Petitioner's Verified Petition on the
25 Attorney General to give notice of Petitioner's intent to bring this proceeding as a private attorney
26 general under Code of Civil Procedure section 1021.5. (*See Exhibit 2, attached hereto.*)

27 23. Petitioner has no other adequate remedy in the course of law unless this Court grants the
28 requested writ of mandate.

1 **IV. FACTUAL BACKGROUND**

2 **A. RENEWAL OF PESTICIDE REGISTRATIONS BY THE DEPARTMENT OF**
3 **PESTICIDE REGULATION**

4 24. Respondent Department of Pesticide Regulation is the state agency vested with the
5 responsibility and jurisdiction over the registration of pesticides in California. Food & Ag. Code §
6 11454. California's registration period for pesticides is 12 months, at which time the registrant must
7 apply for renewal. Food & Ag. Code § 12817. For each pesticide, Respondent must determine
8 whether renewal is appropriate in light of a number of factors, which are the same evaluation criteria
9 used for initial registration. Food & Ag. Code §§ 12824, 12825. As part of its decision-making
10 process, Respondent must consult with agencies having jurisdiction over the resources potentially
11 affected by pesticide use. *See* 3 Cal. Code Reg. § 6252.

12 25. Respondent must reevaluate a registered pesticide when it has received information indicating
13 a pesticide is likely to cause a significant adverse impact, or when there is any alternative that may
14 significantly reduce an adverse environmental impact. 3 Cal. Code Reg. § 6220. Respondent must
15 also reevaluate a registered pesticide whenever certain factors have been found such as, but not
16 limited to: environmental contamination; fish or wildlife hazard; other information suggesting a
17 significant adverse risk; or availability of an effective and feasible alternative material or procedure
18 which is demonstrably less destructive to the environment. 3 Cal. Code Reg. § 6221.

19 26. If Respondent makes a decision to renew a pesticide registration without reevaluation, the
20 Respondent director must make a written finding that he or she has not received sufficient information
21 necessitating reevaluation pursuant to sections 6220 and 6221. 3 Cal. Code Reg. § 6215(c.)

22 27. If the Respondent director obtains information from the public indicating possible adverse
23 effects from the use of a pesticide, the director shall respond in writing to all significant adverse
24 environmental points raised and the reason for the decision either to reevaluate or not reevaluate the
25 pesticide registration. 3 Cal. Code Reg. §§ 6222(b), 6254(b).

26 **B. RESPONDENT'S PESTICIDE REGISTRATION AND RENEWAL PROGRAM IS A**
27 **CERTIFIED REGULATORY PROGRAM UNDER CEQA**

28 28. On December 28, 1979, the California Resources Agency approved the state's pesticide
registration process as a certified regulatory program under CEQA. Pub. Res. Code § 21080.5(g);

1 *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal. App.
2 5th 224, 238-243; 14 Cal. Code Reg. § 15251(i)(1.)

3 29. As a certified regulatory program, the pesticide registration process must comply with the
4 general policy goals of CEQA. See § 21080.5(c); *Mountain Lion Foundation v. Fish & Game*
5 *Commission* (1997) 16 Cal. 4th 105, 114; *Sierra Club v. State Board of Forestry* (1994) 7th Cal.4th
6 1215, 1230-1231. This includes CEQA directives that an agency conduct environmental review when
7 there is the potential for significant impacts from a project approval, consult with trustee agencies
8 over the environmental impacts of a proposed project, consider the cumulative impacts of its project
9 approvals, provide timely and adequate responses to comments made by the public, and consider
10 feasible alternatives to the proposed action. Pub. Res. Code § 21080.5; *Azusa Land Reclamation Co.*
11 *v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App.4th 1165, 1192; *Friends of Old Trees*
12 *v. Dept. of Forestry and Fire Protection* (1997) 52 Cal. App. 4th 1383, 1404-1405; *Dunn-Edwards*
13 *Corp. v. Southcoast Air Quality Management District* (1993) 19 Cal. App. 4th 519, 534; *EPIC v.*
14 *Johnson* (1985) 170 Cal. App. 3d 604, 625.

15 30. Since the pesticide registration program includes Respondent's program for deciding whether
16 to annually renew existing pesticide registrations, Respondent's decisions whether to renew pesticide
17 registrations are included in the regulatory program certified by the Secretary of Resources under
18 CEQA. See also 3 Cal. Code Regs. §§ 6252-6255.

19 31. A decision by Respondent to renew a pesticide registration is a "project" under CEQA because
20 the decision grants a license to pesticide manufacturers and users to sell and apply potentially harmful
21 chemicals in California. Pub. Res. Code §§ 21083; 21002; 21065(c); 14 Cal. Code Reg. § 15378(c.)

22 32. In addition, Respondent has the authority to deny or modify a pesticide registration in response
23 to a renewal application. Food & Ag. Code § 12824. Thus, Respondent's decision-making authority
24 over renewal applications is "discretionary" and therefore subject to CEQA. Pub. Res. Code §
25 21080(a); *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App.3d 259, 267, 269.

26 33. CEQA and the Food and Agriculture Code require Respondent to assess and identify the
27 potential environmental impacts arising from its proposed decision to renew pesticides. Food and Ag.
28 Code § 12824 ("All pesticides for which renewal of registration is sought also shall be evaluated in

1 accordance with this section”); Pub. Res. Code § 21080.5(d)(2)(A); (agency must assess whether
2 activities may have significant adverse effects on the environment); *Sierra Club v. State Board of*
3 *Forestry, supra*, 7 Cal.4th at 1228 (agencies operating under a certified regulatory programs must
4 assess the potential for significant environmental impacts at the time of project approval.)

5 34. In renewing pesticide registrations, Respondent must also comply with CEQA requirements
6 that an agency provide the public with notice and the opportunity to review and comment on proposed
7 actions with the potential for significant environmental impacts, and to review and respond to public
8 comments prior to making any decision. Pub. Res. Code §§ 21080.5(d)(2),(3); *EPIC v. Johnson,*
9 *supra*, 170 Cal. App. 3d at 627-28; *Gallegos v. State Bd. of Forestry* (1978) 76 Cal. App. 3d 945,
10 952-55. Respondent must also consider submitted information prior to renewing pesticide
11 registrations without reevaluation and convey to the public an accurate description of the agency’s
12 decision-making process. Pub. Res. Code §§ 21080.5(d)(2)(C); 21080.5(d)(3); 21002, 21003.1(a);
13 *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391;
14 *Schoen v. Department of Forestry & Fire Protection* (1997) 58 Cal. App. 4th 556, 563.

15 **C. RESPONDENT’S PRIOR RODENTICIDE REEVALUATION.**

16 35. In 2013, Respondent completed a Second Generation Anticoagulant Rodenticide Assessment
17 (“2013 Risk Assessment”), which concluded:

18 DPR analyzed wildlife incident and mortality data between 1995 and 2011, and rodenticide
19 use and sales data between 2006 and 2010. The data indicate that exposure and toxicity to
20 non-target wildlife from second generation anticoagulant rodenticides is a statewide problem.
21 In addition, the data suggest that the problem exists in both urban and rural areas. Research
22 data from various locations throughout California indicate that exposure is occurring in many
23 taxa and in various ecosystems (urban, suburban, rural, and natural/wild areas).Of the 492
24 animals analyzed between 1995 and 2011, approximately 73% had residues of at least one
25 second generation anticoagulant rodenticide ...The data also show that exposure of wildlife
26 to second generation anticoagulant rodenticides can lead to sub-lethal effects. The sub-lethal
27 effects reduce the fitness of wildlife at a time when wildlife are already meeting numerous
28 challenges. Riley et al’s (2007) study of bobcats is an example of the sub-lethal effects of
rodenticides. The bobcats died due notoedric (sic) mange. Mange was not previously known
as a significant pathogen in wild felids. However, exposure to rodenticides appears to have
contributed to the disease process, and hence, the mortality of the bobcats..

Based on this data, Respondent found that “the use of second generation rodenticides presents a
hazard related to persistent residues in target animals resulting in impacts to non-target wildlife.”

36. The 2013 Risk Assessment states that “[w]hile the data show exposure, they do not link
specific uses, or location of use of second generation anticoagulant rodenticide (i.e., indoors or

1 outdoors, homeowners or professionals) to exposure.” Nonetheless, Respondent made a
2 determination that the banning of consumer applications of these rodenticides could potentially avoid
3 the continued adverse effects on wildlife. On July 1, 2014, Respondent adopted new regulations that
4 restricted the purchase, possession, and use of rodenticide baits that contain the active ingredients
5 brodifacoum, bromadiolone, difenacoum, and difethialone.

6 37. The 2014 regulatory amendment limited the purchase, possession, and use of the four second
7 generation rodenticides (also known by the acronym “SGAR”) to certified pesticide applicators and
8 those under their direct supervision. Respondent’s notices stated that it “adopted these regulations
9 due to overwhelming evidence of wildlife weakened or killed by SGARs” but that “[o]ther categories
10 of rodenticides — the 1st-generation anticoagulants, acute toxicants, and certain burrow fumigants
11 — are still available to consumers.” At the time of this notice, Respondent stated:

12 DPR expects that trained certified applicators will exercise caution and fulfill their
13 professional responsibilities when using SGARs and use them only when necessary. Once
14 applicators are certified, they’re required to take continuing education courses that include
15 instruction about using rodenticides safely and only when necessary. If DPR continues to
16 receive reports of nontarget wildlife being adversely impacted by SGARs, further regulatory
17 action may be considered.

18 **D. RESPONDENT'S RENEWAL OF RODENTICIDE REGISTRATIONS WITH**
19 **POTENTIALLY SIGNIFICANT ADVERSE IMPACTS ON NON-TARGET**
20 **WILDLIFE.**

21 38. On November 17, 2017, Respondent issued a public notice entitled “NOTICE OF
22 PROPOSED DECISION TO RENEW PESTICIDE PRODUCT REGISTRATIONS FOR 2018.” The
23 notice states: “This is a proposed decision to renew Certificates of Registration of pesticide products
24 registered with DPR that will expire on December 31, 2017.” The notice also states that “[t]he annual
25 renewal of Certificates of Registration is a non-discretionary duty that must be taken if certain
26 requirements, as described in the regulatory framework below, are satisfied by the registrant.” The
27 notice includes a proposed finding by the Respondent director stating:

28 At this point in time, the Director finds, for all pesticide products proposed for renewal that
are not currently under reevaluation and are not under consideration for reevaluation,
sufficient information has not been received necessitating the reevaluation or initiation of the
cancellation process. This proposed action to renew Certificates of Registration of pesticide
products currently registered in California maintains the status quo and will not cause either
a direct or a reasonably foreseeable indirect physical change in the environment that
constitutes a significant adverse environmental effect, and as a result, no alternatives or
mitigation measures are proposed. Based on the findings made above, the Director

1 determines the renewal of pesticide product registrations for the calendar year 2018 should
2 proceed in accordance with the applicable laws and regulations and no additional products
need to be placed into reevaluation or the cancellation process initiated.

3 The notice invites public comment on Respondent's proposed decision by December 22, 2017.

4 39. On December 22, 2017, Petitioner submitted comments on Respondent's proposal to renew
5 without reevaluation pesticide registrations for the seven rodenticides, brodifacoum, bromadiolone,
6 difethialone, difenacoum, diphacinone, chlorophacinone and warfarin for the year 2018. Petitioner's
7 comments stated that continued use of these rodenticides was causing and would continue to cause
8 significant adverse impacts to non-target wildlife through ingestion of poisoned target rodent species.
9 Petitioner's comments included evidence gathered over the last four years consisting of incident
10 reports in which numerous non-target wildlife species have been poisoned as well as more recent
11 scientific studies showing that 1) poisoning of non-target wildlife by second generation rodenticides
12 was continuing despite their restricted use status; and 2) poisoning of non-target wildlife by first
13 generation rodenticides diphacinone, chlorophacinone and warfarin still available for normal
14 consumer use presented a significant threat, particularly due to sub-lethal impacts leading to
15 debilitating diseases such as mange.

16 40. In support of its comments, on December 22, 2017 and thereafter, Petitioners submitted a
17 number of studies substantiating the significant threat posed by first and second generation
18 rodenticides on wildlife species in California.

19 41. Petitioner's comments requested that Respondent initiate reevaluation pursuant to state
20 regulations and CEQA in order to assess the significance of these continued rodenticide poisonings
21 of non-target wildlife and the feasibility of alternative or mitigation measures that would avoid or
22 substantially lessen these impacts.

23 42. On or about December 31, 2017, Respondent renewed all current pesticide registrations for
24 further use in 2018, including registrations for the seven rodenticides. Respondent treated this
25 renewal as a ministerial (non-discretionary) decision and did not post any notice of the decision with
26 the Secretary of Resources. At this time, Respondent did not make a determination whether
27 reevaluation of the seven rodenticides identified in Petitioner's comments was warranted.

28 43. From January to March 2018, Petitioner submitted additional newly published scientific

1 studies showing that the continued use of the seven rodenticides was having a significant adverse
2 impacts on non-target wildlife, including species of special concern and species listed under the
3 federal and state Endangered Species Acts.

4 44. On March 17, 2018, Petitioner sent an email to Respondent requesting that Respondent, in
5 considering and evaluating Petitioner’s comments to initiate reevaluation for the seven rodenticides,
6 consider and analyze the monitoring data produced since 2014 in order “to continuously evaluate the
7 impact of SGAR use and take additional steps, if necessary,” and to determine whether the continued
8 use of rodenticides requires “appropriate regulatory action.”

9 45. On March 19, 2018, Respondent sent a letter to Petitioner’s counsel, stating that “DPR is
10 proceeding with the renewal of [the seven rodenticides] and will not be placing them into reevaluation
11 at this time.” Respondent’s letter does not provide any response to the monitoring data or studies
12 submitted in support of Petitioner’s comments. Instead, the letter states that “DPR will continue to
13 evaluate available information to determine if additional mitigation measures are needed to
14 adequately protect non-target wildlife. If at any point DPR concludes that there are additional studies
15 that registrants could conduct on the impact of anticoagulant rodenticide use on non-target wildlife
16 in order to determine the need and extent of further regulatory action to address these concerns, DPR
17 may utilize its formal reevaluation process.”

18 46. On April 18, 2018, Respondent issued a “Final Decision Regarding Renewal of Registration
19 of Pesticide Products for 2018,” which repeated Respondent’s prior decision that “DPR is proceeding
20 with the renewal of FGARs and SGARs and will not be placing them into reevaluation at this time.”

21 47. On May 16, 2018, Respondent’s “Final Decision Regarding Renewal of Registration of
22 Pesticide Products for 2018” was filed with the Secretary of Resources.

23 48. Petitioner has performed all conditions precedent to the filing of this petition by raising each
24 and every issue known to it regarding the impacts of rodenticide contamination on non-target wildlife,
25 and by requesting reevaluation at the time of Respondent’s proposed renewal of pesticide products
26 containing these rodenticides that contribute to this contamination, in compliance with Public
27 Resources Code § 21177, during the public comment period for Respondent’s pesticide registration
28 renewal.

1 49. Petitioner served their Notice of Commencement of Action, a true and correct copy of which
2 is filed herewith, on Respondent prior to the filing of their petition in compliance with Public
3 Resources Code § 21167.6.

4 **V. CLAIMS FOR RELIEF**

5 **FIRST CAUSE OF ACTION** 6 (Violation of CEQA)

7 50. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

8 51. In renewing, without reevaluation, rodenticide products containing brodifacoum,
9 bromadiolone, difethialone, difenacoum, diphacinone, chlorophacinone and warfarin (hereinafter
10 "Rodenticides") for 2018, Respondent prejudicially abused its discretion by failing to proceed
11 according to law, failing to make findings supporting its decision, and failing to support its decision
12 with substantial evidence. *See* Pub. Res. Code §§ 21080.5; 21160; 21166, 21168, 21168.5.

13 52. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
14 by failing to consult with trustee agency Department of Fish and Wildlife regarding the ongoing
15 impacts to non-target wildlife caused by continuing use of the Rodenticides.

16 53. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
17 by failing to assess and consider available scientific information and monitoring data showing
18 potentially significant impacts to non-target wildlife caused by continuing use of the Rodenticides.

19 54. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
20 by failing to conduct further environmental review in light of the changed circumstances under which
21 the Rodenticides continue to be used and new information, which was not known and could not have
22 been known at the time that Respondent's prior rodenticide review took place, showing that
23 potentially significant impacts have occurred and will likely continue to occur.

24 55. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
25 by failing to assess the availability of feasible alternatives or feasible mitigation measures available
26 that would substantially lessen the significant adverse effects to non-target wildlife caused by
27 continuing use of the Rodenticides.

28 56. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
by failing to respond to Petitioner's comments and submitted studies and data showing potentially

1 significant impacts to non-target wildlife caused by continuing use of the Rodenticides..

2 **SECOND CAUSE OF ACTION**
3 (Violation of Pesticide Regulations/Lack of Findings)

4 57. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

5 58. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
6 and acted contrary to law by failing to consult with trustee agency Department of Fish and Wildlife
7 regarding the ongoing impacts to non-target wildlife caused by continuing use of the Rodenticides.
8 3 Cal. Code § 6252.

9 59. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
10 and acted contrary to law by failing to apply the standards set forth in its own regulations requiring
11 reevaluation where the evidence shows environmental contamination is likely to have significant
12 impacts to wildlife. 3 Cal. Code §§ 6220; 6221(b); 6221(d)(3).

13 60. In, renewing without, reevaluation Rodenticides for 2018, Respondent abused its discretion
14 and acted contrary to law by failing to determine that there were no feasible alternatives that may
15 significantly reduce adverse environmental impacts. 3 Cal. Code Reg. § 6220.

16 61. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
17 and acted contrary to law by failing to consider and evaluate monitoring information and scientific
18 studies that were reasonably obtainable and necessary to determine whether the continued registration
19 and use of this pesticide will have significant adverse environmental impacts. 3 Cal. Code Reg. §
20 6222(a).

21 62. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
22 and acted contrary to law by failing to respond to comments adequately, including providing a written
23 evaluation of any significant adverse environmental point raised during the review process. 3 Cal.
24 Code Reg. §§ 6222(b); 6254(b).

25 63. In renewing, without reevaluation, Rodenticides for 2018, Respondent abused its discretion
26 and acted contrary to law by failing to make required findings. *See Topanga Assn. for a Scenic*
27 *Community v. County of Los Angeles* (“*Topanga*”) (1974) 11 Cal. 3d 506.

28 62. In renewing the Rodenticides for 2018 without reevaluation Respondent acted arbitrarily and
capriciously and failed to proceed in the manner required by law. Respondent’s actions, therefore,

1 constitute a prejudicial abuse of discretion actionable under Code of Civil Procedure § 1084 *et seq.*

2 **VI. PRAYER FOR RELIEF**

3 WHEREFORE, Petitioner prays for judgment as follows:

4 1. For a writ of mandate ordering Respondent to set aside its decision to renew without
5 reevaluation the Rodenticides and all registered pesticide products containing such Rodenticide
6 ingredients that contribute to non-target wildlife contamination; to reconsider that decision and to
7 make a new decision in light of the Court's ruling on this petition; and to file a return with the Court
8 showing compliance with the writ of mandate.

9 2. For injunctive relief restricting use of the Rodenticides pending the completion of
10 Respondent's evaluation and satisfaction of the Court's writ of mandate;

11 3. For reasonable attorney's fees under Code of Civil Procedure § 1021.5;

12 4. For costs of suit; and

13 5. For such other and further relief as the Court deems proper.

14 DATED: June 13, 2018

15 By: 
16 Michael W. Graf
17 Deborah A. Sivas
Attorneys for Petitioner

18 P003 Petition for Writ of Mandate.wpd

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VERIFICATION

Raptors Are The Solution v. California Department of Pesticide Regulation et al.
Alameda County Superior Court, Case No. _____

I, Michael W. Graf, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State.

I have my professional office at 227 Behrens Street, El Cerrito California, 94530.

2. I am the attorney of record for Petitioner Raptors Are the Solution, which has its principal place of business in Berkeley, California, in Alameda County. Petitioner is absent from Contra Costa County in which I have my office. For that reason, I make this verification on its behalf.

4. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 13th day of June, 2018 at El Cerrito, California.

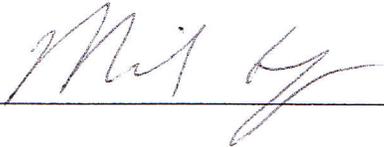


EXHIBIT 1

**Michael W. Graf
Law Offices**

227 Behrens St.,
El Cerrito CA 94530

Tel/Fax: 510-525-1208
mwgraf@aol.com

June 12, 2018

Via Facsimile

California Department of Pesticide Regulation
1001 I Street
P.O. Box 4015
Sacramento, California 95812-4015
Fax: 916-324-1491

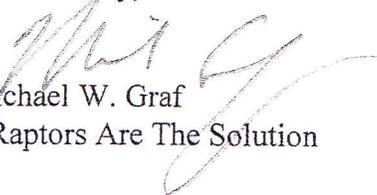
RE: Notice of Commencement of Action Challenging Department of Pesticide Regulation's Renewal of Rodenticides without Reevaluation.

To Whom it May Concern:

Pursuant to California Public Resources Code § 21167.5, please take notice that Raptors Are The Solution ("Petitioner"), a public interest organization concerned about impacts of rodenticide use on non-target wildlife species intends to file a Petition for Writ of Mandate challenging the Department of Pesticide Regulation's Renewal of rodenticide products containing brodifacoum, bromadiolone, difethialone, difenacoum, diphacinone, chlorophacinone and warfarin without Reevaluation.

Petitioner's actions will include claims under the California Environmental Quality Act.

Sincerely,



Michael W. Graf
Attorney for Raptors Are The Solution

EXHIBIT 2

**Michael W. Graf
Law Offices**

227 Behrens St.,
El Cerrito CA 94530

Tel/Fax: 510-525-1208
email: mwgraf@aol.com

June 13, 2018

Via Regular Mail
California Attorney General's Office
1300 I Street
Sacramento, CA 95814-2919

Re: Verified Petition for Writ of Mandate Challenge to California Department of
Pesticide Regulation's Renewal of Rodenticides without Reevaluation

To Whom it May Concern:

Pursuant to Public Resources Code § 21167.7 and Code of Civil Procedure 388, enclosed please find a copy of Petitioner's Verified Petition for Writ of Mandate in the above referenced matter.

Please let me know if you have any questions.

Very truly yours,


Michael W. Graf