



California Forest Pest Council

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Dedicated to protecting California's forests since 1951

www.caforestpestcouncil.org

June 28, 2018

Hon. Tani Cantil-Sakauye, Chief Justice
Hon. Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4712

Re: **Support:** Petition for Review to California Supreme Court
Monsanto v. OEHHA

The California Forest Pest Council (CFPC) is a non-profit educational organization consisting of several hundred public and private forest managers, researchers, foresters, entomologists, pathologists, biologists, and others interested in the health of California's forests and protection from damage caused by diseases, insects, weeds, animals, drought, catastrophic wildfire, pollution and climate change.

Due to our diverse climate, soils and topography, California's forests are very diverse and cover more than 30 million acres. Forests are integral to providing a sustainable supply of renewable wood products, clean water supply and storage, habitat for wildlife species and aesthetic and recreational values.

Glyphosate is widely used by forest managers, including private forestland owners, government agencies, and conservation organizations as part of integrated pest management programs to meet many objectives including, but not limited to, the following:

- Control invasive, non-native weeds that otherwise aggressively outcompete and replace desirable native plants, inhibit forest regeneration, and create hazardous fire fuel loading.
- Establish and/or maintain forest "shaded" fuelbreaks which significantly aid wildfire suppression efforts and/or keep wildfires on the ground from torching up into devastating and uncontrollable forest crown fires.
- Control vegetation which otherwise competes aggressively with very young tree seedlings for limited soil moisture that is essential for successful reforestation after wildfire.
- Control competing vegetation to ensure planted tree seedling survival and growth after harvest as a critical step in providing a sustainable supply of renewable wood products.

Regulatory agencies in California, the United States and internationally have concluded that the proper labeled use of glyphosate is safe for human health, wildlife, and the environment. The United States Environmental Protection Agency (U.S. EPA) classifies glyphosate in its most favorable category for carcinogenicity, i.e. Group E, "not likely to be carcinogenic to humans".

Prior to the Office of Environmental Health Hazard Assessment's (OEHHA) placement of glyphosate on the Proposition 65 list, CFPC provided comments on the important role of glyphosate to improve and/or maintain forest health and the decades of research documenting its safe and effective use. Unfortunately CFPC's comments, along with any other technical or rationale comments from land managers impacted by the listing, were not even considered because the sole criteria used by OEHHA for listing was based on an action by a foreign, non-regulatory entity that is unaccountable to the government or citizens of California, i.e. the International Agency for Research on Cancer (IARC).

It is our understanding that Proposition 65 imposes penalties of up to \$2,500 per day for violations of its specified prohibitions and that it authorizes any person (even someone who has not been injured) to bring a private enforcement action on behalf of the public. This will discourage responsible forest managers and landowners from using glyphosate because once a lawsuit is initiated, this places the burden on the forest manager or landowner to establish that the exposure poses "no significant risk". This could be very costly, requiring detailed scientific analyses and time consuming and expensive trials, even if the forest landowner or manager plans and implements an activity which poses no significant risk.

As a result, landowners/managers will be faced with a decision as to whether it is worth the added financial risk created by Proposition 65 listing to plan and implement good forest health management activities e.g. control non-native invasive weeds, create and/or maintain strategic shaded fuel breaks, or to reforest after a devastating wildfire. All of these activities are voluntary financial commitments that landowners and managers make without receiving any financial returns for decades, if at all. They will need to decide if these activities are worth not only the cost of the activity but also the risk of significant additional costs to defend potential private enforcement lawsuits and/or civil litigation that might have little or no basis and/or be based upon ulterior motives. Or if a landowner or manager decides to conduct the activity but not use glyphosate solely because of the risk of frivolous litigation imposed by the Prop 65 listing, the alternative forest management treatment would very likely be more expensive and/or less environmentally suitable.

Therefore, the CFPC respectfully requests the California Supreme Court accept the petition for review of Monsanto v. OEHHA.

Thank you for taking the time to consider our comments concerning this very important forest health matter.

Sincerely,



Robert G. Ryneerson
Chairman, California Forest Pest Council

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CERTIFICATE OF SERVICE

I, Robert G. Rynearson, on behalf of the California Forest Pest Council, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is P.O. Box 990898 Redding, CA 96099-0898, and my e-mail address is bohr@wmbeaty.com. On June 28, 2018, based on agreement of the parties to accept electronic service, I served the foregoing document described as **AMICUS CURIAE LETTER** by transmitting it electronically via e-mail to the electronic notification addresses listed below:

ARNOLD & PORTER KAYE SCHOLER LLP

Trenton H. Norris
Sean M. SeLegue
S. Zachary Fayne
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Tel.: (415) 471-3100
trent.norris@arnoldporter.com
sean.selegue@arnoldporter.com
zachary.fayne@arnoldporter.com

**OFFICE OF THE ATTORNEY GENERAL
OF CALIFORNIA**

Susan S. Fiering
Laura J. Zuckerman
Dennis A. Ragen
Heather C. Leslie
1515 Clay Street, 20th Floor
Oakland, CA 94612
Tel.: (510) 879-1299
susan.fiering@doj.ca.gov
laura.zuckerman@doj.ca.gov
dennis.ragen@doj.ca.gov
heather.leslie@doj.ca.gov

HORVITZ & LEVY LLP

David M. Axelrad
Dean A. Bochner
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505
Tel.: (818) 995-0800
daxelrad@horvitzlevy.com
dbochner@horvitzlevy.com

**NATURAL RESOURCES DEFENSE
COUNCIL**

Selena Kyle
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
Tel.: (312) 663-9900
skyle@nrdc.org

ALSHULER BERZON LLP

Stephen P. Berzon
Danielle Leonard
177 Post Street, Suite 300
San Francisco, CA 94108
Tel.: (415) 421-7151
sberzon@altshulerberzon.com
dleonard@altshulerberzon.com

ENVIRONMENTAL LAW FOUNDATION

James R. Wheaton
Lowell Chow
Nathaniel Kane
1736 Franklin Street, 9th Floor
Oakland, CA 94612
Tel.: (510) 208-4555
wheaton@envirolaw.org
elfservice@envirolaw.org

KAHN, SOARES & CONWAY, LLP
George H. Soares
Ann M. Grottveit
1415 L Street, Suite 400
Sacramento, CA 95814
Tel.: (916) 448-3826
agrottveit@kscsacramento.com

CENTER FOR FOOD SAFETY
Adam Keats
303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
Tel.: (415) 826-2770
AKeats@centerforfoodsafety.org

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 28, 2018 at Redding, California.



Robert G. Ryneason