

Stephan C. Volker  
Alexis E. Krieg  
Stephanie L. Clarke  
Jamey M.B. Volker (Of Counsel)

Law Offices of  
**STEPHAN C. VOLKER**  
1633 University Avenue  
Berkeley, California 94703  
Tel: 510/496-0600 ❖ FAX: 510/845-1255  
e-mail: [svolker@volkerlaw.com](mailto:svolker@volkerlaw.com)

10.557.05

January 9, 2018

PRESS RELEASE

FOR IMMEDIATE RELEASE

**ENVIRONMENTAL GROUPS WIN LAWSUIT  
OVERTURNING STATE PESTICIDE PROGRAM**

Contacts:

North Coast Rivers Alliance (NCRA): Frank Egger (415) 456-6356  
Pesticide Free Zone: Ginger Souders-Mason (415) 456-2349  
Attorney for Environmental Groups: Stephan Volker (510) 496-0600

On January 8, 2018, Judge Timothy M. Frawley of the Sacramento County Superior Court issued a landmark ruling overturning the State of California's Statewide Plant Prevention and Management Program. Judge Frawley ruled that the California Department of Food and Agriculture ("CDFA") violated the California Environmental Quality Act (CEQA) in nine significant respects. Therefore the Court set aside CDFA's approval of the Pesticide Program and suspended further activities under the Program until CDFA has certified an Environmental Impact Report ("EIR") that corrects CDFA's violations of CEQA.

Plaintiffs North Coast Rivers Alliance (NCRA), Pesticide Free Zone, Inc. (PFZ) and Health & Habitat, Inc. (H&H) had filed the first of three lawsuits against CDFA in Sacramento Superior Court on January 12, 2015 to overturn CDFA's Statewide Plant Pesticide Program. In 2016 and 2017 NCRA, PFZ and H&H filed two more suits challenging CDFA's decisions to expand that Program to allow vastly increased use of the pesticides imidacloprid and chlorantraniliprole under the brand names Merit 2F and Acelepryn. Imidacloprid belongs to a class of pesticides called neonicotinoids (or neonics). Neonicotinoids have been linked to recent sharp declines in pollinators including honeybees and bumble bees. As modeled by CDFA, its approved applications of Merit 2F and Acelepryn would exceed the acute exposure thresholds for the tri-colored blackbird, western yellow-billed cuckoo, purple martin, California freshwater shrimp, Shasta crayfish, earthworms, adult honeybees and vernal pool andrenid bees, among other creatures. And, under at least one CDFA modeling scenario, the approved use of

Merit 2F would exceed chronic use exposure thresholds for additional species including the California tiger salamander, foothill yellow-legged frog, Arroyo toad, yellow rail, riparian brush rabbit and the Nelson's antelope squirrel. Many of these species, including the western yellow-billed cuckoo and the California tiger salamander, are special-status species due to their declining populations.

In his 33-page ruling, Judge Frawley agreed with the plaintiffs that CDFA's Statewide Plant Pesticide Program violated CEQA in nine significant respects. First, the Court agreed with plaintiffs that CDFA improperly authorized "implementation of site-specific [pesticide] activities without the required site-specific environmental review." Ruling at 13. Second, the Court agreed with plaintiffs that CDFA must prepare and circulate a Notice of Determination ("NOD") "to provide public notice of its decisions to approve or carry out subsequent, site-specific [pesticide] activities under the Program," and that CDFA's failure to do so is "contrary to CEQA." Ruling at 18. Third, the Court agreed with Petitioners that CDFA had failed to adequately describe the environmental setting in which the pesticide activities would take place, with the result that the public was not provided adequate information about the impacts of the pesticide activities on the environment. Ruling at 19-20. "As a result, it is impossible to know the existing environmental conditions in the absence of the [Pesticide] Project, and therefore impossible to evaluate what effects the Project might have on existing environmental conditions." Ruling at 20. Third, the Court "agree[d] with Petitioners that the [CDFA's Programmatic EIR] improperly ignored potentially significant impacts to pollinators." Ruling at 21. Fifth, the Court "agree[d] with Petitioners that there is not substantial evidence to support [CDFA's] finding that the Project will not have cumulative impacts to impaired surface waters." Ruling at 22. For example, "the PEIR's determination that [harmful pesticides] would not reach water bodies in any detectable concentration does not appear to be supported by any modeling data or other evidence. Rather, it is based upon unsupported assumptions and speculation." Ruling at 23. Sixth, the Court "agree[d] with Petitioners that the PEIR's description of other pesticide programs is woefully deficient." Ruling at 23. Seventh, the Court "agree[d] with Petitioners that the PEIR improperly defers the formulation of mitigation measures" to reduce or avoid the impacts of its pesticide activities. Ruling at 24-26. As the Court explained, "it is not a sufficient mitigation measure for the PEIR to state that a [pesticide] treatment plan will be developed in the future to avoid or 'minimize' substantial adverse effects." Ruling at 25. Eighth, the Court "agree[d] with Petitioners that the [PEIR's] alternatives analysis should have included details about [CDFA's] existing [pesticide] activities, and described how those ongoing activities would be affected by

the Organic Pesticide alternatives.” Ruling at 26-27. Finally, the Court agreed with Petitioners that CDFA’s approval of expansions of its Statewide Plant Pesticide Program in 2016 and 2017 were unlawful because they were based on CDFA’s inadequate 2014 PEIR. Ruling at 29-32.

Speaking on behalf of all three plaintiffs, NCRA President Frank Egger stated that “Several scientific studies link the recent increase in the use of neonicotinoid pesticides to a significant decline in populations of honeybees and bumble bees. It now appears that continued use of neonicotinoids could result in large scale population extinctions of honeybees and bumble bees, which could have devastating impacts on cultivated crops as well as native plants dependent on pollination by bees. In California, at least 30% of all fruits, nuts and vegetables rely on pollination, primarily by bees. Neonicotinoids have also been linked to impacts on other wildlife, including birds such as the tri-colored blackbird, western yellow-billed cuckoo, purple martin and yellow rail, amphibians such as the California tiger salamander and foothill yellow-legged frog, and mammals including the riparian brush rabbit and Nelson’s antelope squirrel. CDFA should be reducing – rather than increasing – the use of neonicotinoid pesticides.”

Stephan Volker, attorney for the plaintiffs, stated that “We are pleased that the Court has required CDFA to conduct a proper environmental review of the adverse effects of neonicotinoids and other pesticide usage before allowing expanded use of these dangerous pesticides. For far too long CDFA has ignored science and violated the California Environmental Quality Act (CEQA) when deciding to allow increased use of these pesticides throughout California without required environmental review.”

Judge Frawley’s Ruling filed January 8, 2018 is attached in PDF format. Additional documents pertaining to the litigation can be obtained from the Volker Law Offices.