

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Natural Resources Defense Council,)	
Inc.)	
)	
Petitioner,)	
)	
v.)	Case No. 14-73353
)	
United States Environmental Protection)	
Agency,)	
)	
Respondent.)	
)	

Center for Food Safety, et al.,)	
)	
Petitioners,)	
)	
v.)	Case No. 14-73359
)	
United States Environmental Protection)	
Agency, et al.,)	
)	
Respondents.)	
)	

**PETITIONER NATURAL RESOURCES DEFENSE COUNCIL'S
MOTION FOR STAY PENDING REVIEW**

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I. INTRODUCTION

Petitioner Natural Resources Defense Council (NRDC) seeks to stay the unlawful registration of a pesticide that threatens the vulnerable remnant of the North American population of monarch butterflies. The monarch butterfly, *Danaus plexippus*, is an iconic species famed for its annual migration across the continent. Decl. of Dr. Sylvia Fallon ¶ 10. This distinctive population of butterflies has declined precipitously in recent years. *Id.* ¶ 13.

By decimating milkweed, the sole food source for monarch caterpillars, herbicides containing the chemical glyphosate have driven the monarch's decline. *Id.* ¶¶ 9, 11, 14. In 1997, approximately one billion monarchs journeyed from summer habitat in the United States and Canada to wintering grounds in Mexico. That number has now declined by over ninety-six percent; this past year, only about 33.5 million butterflies—a record low—reached their winter refuge. *Id.* ¶ 13. Scientists have warned that the monarch migration is at risk of vanishing. *Id.*

Pursuant to Federal Rule of Appellate Procedure 18 and 5 U.S.C. § 705, NRDC moves to stay a decision by respondent U.S. Environmental Protection Agency (EPA) to register Enlist Duo, a new glyphosate-containing herbicide, for use in six Midwestern states.¹ EPA first proposed to register Enlist Duo in April 2014, asserting that the agency need not conduct any environmental risk

¹ These states include Illinois, Indiana, Iowa, Ohio, South Dakota, and Wisconsin.

assessment for glyphosate. *See* Decl. of Aaron Colangelo Ex. A at 1. In public comments on the proposed registration, NRDC alerted EPA to the precarious state of the dwindling monarch population. *See* Colangelo Decl. Ex. D at 3, 6. NRDC also identified a substantial body of scientific research linking widespread use of glyphosate-containing herbicides to the monarch's sharp decline. *See id.* at 10-14.

Notwithstanding NRDC's comments, EPA registered Enlist Duo on October 15, 2014, without *any* evaluation of impacts to monarchs. *See* Colangelo Decl. Exs. B, C. NRDC petitioned this Court for review of EPA's registration decision on October 30, 2014.²

In its response to public comments regarding registration of Enlist Duo, EPA asserted that it would analyze glyphosate's effects on monarchs in a draft risk assessment proposed for completion by December 2014—that is, after the agency had already registered Enlist Duo. Colangelo Decl. Ex. E at 23. EPA has yet to

² NRDC and its members are adversely affected by EPA's registration decision and have standing to challenge it. To establish standing, NRDC must show that its members would have standing to sue in their own right, that the interests NRDC seeks to protect are germane to its organizational purposes, and that this litigation will not require its members' individual participation. *See Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). NRDC satisfies this test. NRDC's members would have standing to sue on their own because they suffer "injury in fact" traceable to the challenged EPA decision and likely to be redressed by a favorable decision. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)); Decl. of LeRoy Gruber; Decl. of Linda Lopez; Decl. of Shelby Moravec; Decl. of William Olmsted; Decl. of Diane Wetzel.

complete this analysis. The agency's total failure to evaluate harm to monarchs before registering Enlist Duo violates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which authorizes registration of a pesticide only after EPA has determined that the pesticide will not cause "unreasonable adverse effects on the environment." 7 U.S.C. § 136a(c)(5)(C), (D). The Court need not review the administrative record to find that NRDC is likely to prevail on this claim.

EPA's acknowledged failure to consider glyphosate's impacts on monarchs alone renders the registration of Enlist Duo invalid. However, Enlist Duo also contains the active ingredient 2,4-D, and EPA further contravened FIFRA by failing to consider adequately the serious health risks 2,4-D poses to fetuses, infants, and children. In particular, EPA underestimated adverse impacts on the thyroid, which can lead to irreversible neurodevelopmental harm. Decl. of Dr. Kristi Pullen ¶¶ 7-9, 14.

Absent a stay, Enlist Duo will be available for purchase and use pending review—a period that has been prolonged by the months-long extension recently sought and obtained by EPA. Order, ECF No. 11. Under the new schedule, briefing will not even be complete for another nine months. This is too long for a pesticide approved through a facially deficient analysis. Allowing Enlist Duo on the market during this time will cause irreparable harm to monarchs and vulnerable human populations. The balance of harms strongly favors a stay, which would advance the

public interest. NRDC seeks only to preserve the status quo while the Court considers whether EPA's registration of Enlist Duo is illegal.

On December 9, 2014, NRDC moved EPA to stay its registration of Enlist Duo, pending review by this Court. Colangelo Decl. Ex. G; *see* Fed. R. App. P. 18(a)(1) ("A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order."). EPA denied NRDC's motion on December 17, 2014. *See* Colangelo Decl. Ex. H. A reviewing court, however, is authorized to "postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. Accordingly, NRDC now moves this Court to stay the registration of Enlist Duo, pending adjudication of NRDC's petition for review. The separate petitioners Center for Food Safety et al. in this consolidated case concur in NRDC's request for a stay pending review and reserve their right to move separately for their own stay pending review.³ Respondent EPA and intervenor Dow AgroSciences oppose.

II. ARGUMENT

A. Standard governing issuance of a stay

"A party seeking a stay must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of relief, that the

³ This motion does not advance the full set of arguments that petitioners plan to raise on the merits. It asserts only those arguments that are most amenable to adjudication prior to EPA's production of the administrative record.

balance of equities tip[s] in his favor, and that a stay is in the public interest.”

Humane Soc’y of the United States v. Gutierrez, 558 F.3d 896, 896 (9th Cir. 2009).

When a stay is sought against the government, the last two factors merge. *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011); *see also Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983) (“The standard for evaluating stays pending appeal is similar to that employed by the district courts in deciding whether to grant a preliminary injunction.”).

B. NRDC is likely to succeed on the merits of its challenge to EPA’s decision to register Enlist Duo

NRDC can demonstrate that EPA’s registration of Enlist Duo without consideration of glyphosate’s effects on monarchs violates FIFRA. NRDC can also show serious questions as to whether EPA violated FIFRA by underestimating 2,4-D’s risks to human health.

To establish likelihood of success on the merits, “petitioners need not demonstrate that it is more likely than not that they will win on the merits.” *Leiva-Perez*, 640 F.3d at 966. Rather, petitioners need show only “a substantial case for relief on the merits.” *Id.* at 968. Alternatively, under this Circuit’s “sliding scale” approach, the existence of “serious questions going to the merits” will suffice if the balance of hardships tips sharply in the movant’s favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). To demonstrate the existence of serious questions, a movant need establish only a “fair chance of

success on the merits.” *Republic of Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (internal quotation marks omitted).

1. FIFRA’s statutory and regulatory scheme

FIFRA authorizes EPA to register a pesticide only upon determining that the pesticide “will perform its intended function without unreasonable adverse effects on the environment,” 7 U.S.C. § 136a(c)(5)(C), and that “when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment,” *id.* § 136a(c)(5)(D); *accord* 40 C.F.R. § 152.112(e). The statute defines “unreasonable adverse effects on the environment” to include “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb).

FIFRA’s definition of “unreasonable adverse effects on the environment” also includes “a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 346a of Title 21 [i.e., the Food Quality Protection Act (FQPA)].” *Id.* The standard under section 346a, in turn, establishes that EPA may allow a pesticide chemical residue on food only if it will be “safe,” which is defined to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.” 21 U.S.C. § 346a(b)(2)(A)(i), (ii).

Section 346a further requires that “an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.” *Id.* § 346a(b)(2)(C)(ii)(II). EPA “may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.” *Id.*; *see also Nw. Coal. for Alts. to Pesticides (NCAP) v. EPA*, 544 F.3d 1043, 1052 (9th Cir. 2008) (holding that EPA must explain how toxicological data justify its decision to depart from the presumptive tenfold safety margin); *NRDC v. EPA*, 658 F.3d 200, 217 (2d Cir. 2011) (invalidating EPA’s pesticide risk assessment for failure to provide a “reasoned basis” for the agency’s decision to use a children’s safety factor less than the tenfold margin (quoting *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983))).

2. NRDC has “a substantial case for relief on the merits” because EPA failed to evaluate glyphosate’s impacts on monarchs

To ascertain that Enlist Duo would not cause unreasonable adverse effects on the environment, EPA was required to evaluate impacts on monarchs before making its registration decision. Yet the agency declined to do so, deferring any evaluation to a proposed future risk assessment that EPA claims will be undertaken as part of glyphosate’s registration review—a process wholly distinct from EPA’s

registration of Enlist Duo. Colangelo Decl. Ex. B; *see* 7 U.S.C. § 136a(g). By ignoring adverse effects on this iconic species, EPA “entirely failed to consider an important aspect of the problem,” *State Farm*, 463 U.S. at 43; *accord Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1034 (9th Cir. 2011). EPA’s registration decision is thus arbitrary, capricious, and not in accordance with the law. *See State Farm*, 463 U.S. at 43. On this basis alone, NRDC is likely to prevail on the merits.

In its final registration decision for Enlist Duo, EPA asserted that all uses for Enlist Duo “are already registered on other glyphosate products” and concluded that “no new [risk] assessment” was needed for glyphosate. Colangelo Decl. Ex. B at 1. However, EPA first registered glyphosate in 1974, Fallon Decl. ¶ 8, and its most recent risk assessment for the chemical dates back to 1993, when the agency last reregistered glyphosate, Colangelo Decl. Ex. F. EPA’s twenty-one-year-old risk assessment for glyphosate wholly predates the substantial body of science demonstrating a causal relationship between widespread glyphosate use and monarch population decline. EPA has *never* evaluated glyphosate’s impacts on monarchs. Accordingly, EPA cannot rely on its previous risk assessments for glyphosate to demonstrate that registration of Enlist Duo will not cause unreasonable adverse effects on the environment.

With the introduction of herbicide-resistant crops, glyphosate use has increased dramatically since its reregistration in 1993. Fallon Decl. ¶ 8. As a non-selective herbicide, glyphosate does not discriminate between target and non-target plants. *Id.* ¶ 7. Because it harms crops and weeds alike, growers initially limited their use of glyphosate. *Id.* ¶ 8. Starting in the mid- to late-1990s, however, crops with genetically engineered resistance to glyphosate came into prevalent use. *Id.* The widespread adoption of glyphosate-resistant crops facilitated a dramatic rise in the application of glyphosate-containing herbicides. *Id.* Between 1989 and 1991, more than eighteen million pounds of glyphosate were used annually on thirteen to twenty million acres; between 2008 and 2009, approximately 182 million pounds of glyphosate were applied annually to over 261 million acres—reflecting an approximately tenfold increase. *Id.*

The widespread use of herbicides containing glyphosate has destroyed substantial amounts of milkweed in the Midwest. *Id.* ¶ 12. A 1999 survey of milkweed in corn and soybean fields documented milkweed in at least fifty percent of fields. *Id.* By 2009, milkweed was documented in only eight percent of fields. *Id.* Relying on this and other data, another study extrapolated the loss of milkweed across the entire Midwest and found a sixty-four percent decline in milkweed from 1999 to 2012. *Id.*

By decimating milkweed, on which the butterflies rely, herbicides containing glyphosate are devastating the North American monarch population. *Id.* ¶¶ 9, 13-14. The population embarks on a multi-generational migration across the continent every year, completing an arduous return journey of over 2,500 miles between Mexico and Canada. *Id.* ¶ 10. The butterflies cannot complete this extraordinary migration unless they encounter sufficient milkweed along the migratory pathway. *Id.* ¶ 11. This is because monarch larvae are entirely dependent on milkweed for their development; it is the only food they eat. *Id.*

If female monarchs are unable to find milkweed on which to lay their eggs during the migration, then the number of next-generation monarchs available to complete the migration diminishes. *Id.* With the loss of milkweed, adult females must travel further and expend more energy to find host plants; with depleted body fat, females lay fewer eggs and face a heightened risk of dying before having the chance to reproduce. *Id.* Reduction of milkweed also decreases the number of caterpillars that survive to adulthood, by intensifying interlarval competition over a limited food supply. *Id.*

The reduction in milkweed prevalence along migratory pathways has translated into an even greater percentage decrease in monarch reproduction. *Id.* ¶ 13. Researchers estimate that the sixty-four percent loss of milkweed in the Midwest has corresponded with an eighty-eight percent decrease in successful

monarch reproduction. *Id.* The declines in milkweed and successful reproduction of monarchs in the Midwest have corresponded with a statistically significant decline in the monarch overwintering population in Mexico. *Id.* The overwintering population has plummeted from a high of approximately one billion butterflies in 1997 to a low of approximately 33.5 million butterflies in 2014, a drop of over ninety-six percent. *Id.*

Given broad consensus among monarch experts that widespread use of glyphosate-containing pesticides in the United States has been the driving force behind the monarch's decline, *id.* ¶ 14, EPA's acknowledged failure to assess Enlist Duo's impacts on monarchs is patently unreasonable. The Court need not go any further—nor await production of the administrative record—to conclude that NRDC is likely to prevail on its challenge to the agency's registration of Enlist Duo.

3. “Serious questions” also exist as to whether EPA critically underestimated the human health risks posed by 2,4-D

Although EPA's failure to consider Enlist Duo's adverse effects on monarchs is, by itself, sufficient to render the registration invalid, EPA's failure to evaluate 2,4-D's health risks in accordance with FIFRA also supports a stay. Pending production of the full administrative record, NRDC can show at least “serious questions,” *Alliance for the Wild Rockies*, 632 F.3d at 1134, going to the merits of that claim.

The herbicide 2,4-D is associated with a number of adverse health outcomes, including higher rates of birth defects, potential for reduced sperm quality, and other signs of endocrine system disruption—particularly through heightened impacts on the thyroid system. Pullen Decl. ¶¶ 6-8. The thyroid is especially important to developing fetuses, infants, and children. *Id.* ¶ 7. Suppression of thyroid hormones during development can cause permanent and irreversible damage to the developing brain, including developmental delays, lower IQ level, and behavioral problems. *Id.*

EPA underestimated 2,4-D's toxicity to fetuses, infants, and children. Mounting scientific evidence demonstrates that 2,4-D can impair the thyroid system. *Id.* ¶ 8. Yet, in its human health risk assessment for Enlist Duo, EPA failed to account properly for these adverse effects. *Id.* ¶ 9. With respect to a critical animal study, EPA dismissed evidence of thyroid toxicity at low exposures, assuming that observed effects were merely “adaptive” rather than “adverse.” *Id.* ¶ 10. In doing so, EPA deviated from current scientific understanding—including guidance from the National Academies of Sciences. *Id.* As a result of this error, EPA used a toxicity benchmark that was insufficiently protective of human health. *Id.*

In addition, the agency documents currently available give no indication that EPA adequately accounted for exposure of fetuses, infants, and children to 2,4-D

through various pathways, including breast milk and spray drift. *Id.* ¶¶ 12-13. EPA thus erred in failing to apply the additional tenfold safety factor (margin of error), as required by statute, to account for uncertainty as to both increased toxicity and greater exposure in infants and children. *Id.* ¶ 11; *see* 21 U.S.C.

§ 346a(b)(2)(C)(ii)(II). EPA’s own analysis shows that, had the agency properly acknowledged the occurrence of adverse thyroid effects at low exposure levels, and had it applied the tenfold safety factor, the agency would have been forced to conclude that Enlist Duo is unsafe. Pullen Decl. ¶ 14.

In light of these shortcomings, EPA’s assessment of 2,4-D’s health risks fails to provide “reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue,” 21 U.S.C. § 346a(b)(2)(A). The defects in the agency’s assessment, particularly as to fetuses, infants, and children, provide NRDC with an additional “fair chance of success on the merits,” *Marcos*, 862 F.2d at 1362 (internal quotation marks omitted), sufficient to justify a stay.

C. If Enlist Duo is allowed on the market for months despite EPA’s unlawful registration decision, NRDC and its members will suffer irreparable harm through loss of monarch butterflies and exposure to dangerous levels of 2,4-D

Dow AgroSciences, the developer, manufacturer, and sole registrant of Enlist Duo, has represented that it intends to launch Enlist Duo in 2015. Decl. of Damon Palmer ¶ 8, ECF No. 8-2. Distribution, marketing, and use of Enlist Duo is therefore imminent. EPA has obtained substantial extensions for briefing and for

filing its certified index to the administrative record in this case. *See* Order, ECF No. 11. These extensions render impossible the adjudication of NRDC's petition for review prior to Fall 2015—well after the onset of the growing season, when Enlist Duo will be available for use on corn and soybeans.

During the growing season, Enlist Duo will kill milkweed growing in the crop fields where it is applied, destroying essential monarch food and habitat. Fallon Decl. ¶¶ 11-12, 16. That EPA has registered Enlist Duo for agricultural use in the Midwest makes continued harm to monarchs even more probable, insofar as studies have shown that monarchs in this region preferentially use milkweed in agricultural versus nonagricultural habitat. *Id.* ¶ 13.

The Midwest has sustained significant milkweed decline, and the approved use of Enlist Duo pending review will contribute to continued loss. *Id.* ¶¶ 12, 16-17. The monarch population is already so imperiled that continued suppression of milkweed, even over a single migration cycle, threatens to foreclose meaningful recovery. *Id.* ¶ 17.

In addition, with such a tiny proportion of the population remaining, monarchs have become exceedingly vulnerable to threats such as adverse climate conditions, extreme weather events, disease, and deforestation. *Id.* With ongoing population loss through continued destruction of milkweed habitat by Enlist Duo,

monarchs will be rendered even more susceptible to adverse conditions that could eradicate the entire surviving population. *Id.*

The Supreme Court has instructed that “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.” *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 545 (1987); accord *Earth Island Inst. v. Carlton*, 626 F.3d 462, 481-82 (9th Cir. 2010). And this Court has recognized that the destruction of wildlife “is, by definition, irreparable harm.” *Humane Soc’y of the United States v. Gutierrez*, 523 F.3d 990, 991 (9th Cir. 2008). That harm is irreparable regardless of whether it occurs through the death of individual creatures, *see id.*, or through the destruction of essential habitat, *see Sierra Club v. Marsh*, 816 F.2d 1376, 1386 n.13 (9th Cir. 1987) (“Once habitat is destroyed and the channel is in place, the harm to the species would be irreparable”); *see also Los Padres Forestwatch v. U.S. Forest Serv.*, 776 F. Supp. 2d 1042, 1052 (N.D. Cal. 2011) (granting preliminary injunction based in part on conclusion that clearance of roadside vegetation would likely cause irreparable environmental harm). The imminent availability of Enlist Duo on the market, combined with the well-documented, causal relationships among use of glyphosate-containing herbicides, milkweed loss, and monarch population decline, render “irreparable injury . . . the more probable or likely outcome,” *Leiva-Perez*, 640 F.3d at 968.

Although the likely impact on monarchs suffices to establish irreparable harm here, it is also probable that use of Enlist Duo pending review will cause irreparable harm to human health by exposing vulnerable populations—fetuses, infants, and children—to dangerous levels of 2,4-D. Elevated exposure creates increased risk of serious adverse effects, particularly thyroid toxicity. *See Pullen Decl.* ¶ 14. Studies have shown that 2,4-D can decrease thyroid hormone levels, *id.* ¶ 8, and suppression of thyroid hormones during development can cause permanent damage to the developing brain, *id.* ¶ 7. Even small changes in the delicately balanced thyroid system can result in serious, irreparable harm to the developing brain and body. *Id.* ¶ 14.

Absent a stay, Enlist Duo is likely to be distributed, marketed, and used pending review. A stay is warranted to prevent irreparable harm to both monarchs and vulnerable human populations, serving FIFRA’s purpose of safeguarding against unreasonable adverse effects on humans and the environment. 7 U.S.C. §§ 136(bb), 136a(c)(5)(C), (D).

D. The irreparable harms to monarchs and human health outweigh any countervailing interests

“The public undoubtedly has a strong interest in ensuring that [pesticide] products do not present an unreasonable adverse risk to the environment, including to human and animal health.” *Woodstream Corp. v. Jackson*, No. 11-867 (JEB), 2011 WL 8883395, at *10 (D.D.C. June 3, 2011) (“It is beyond cavil that the

public interest is served by having the fewest potentially harmful products on the market.”). This Court has also recognized the “public’s interest in maintaining [wildlife] habitat,” *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014), an interest that squarely encompasses protection of essential milkweed habitat for monarch butterflies.

Granting a stay would simply preserve the status quo, as Enlist Duo has yet to enter the market. To the extent Dow asserts an interest in marketing Enlist Duo as soon as possible, this private interest is purely financial and carries less weight because of its temporary nature. As the Supreme Court has instructed, “[i]f [environmental] injury is sufficiently likely, . . . the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco*, 480 U.S. at 545. This is in part because environmental injury is generally permanent or at least of long duration, extending beyond the length of a stay; in contrast, financial harm is confined to the short duration of a stay. *See League of Wilderness*, 752 F.3d at 764-66.

This is precisely the situation here. The monarch population has diminished to the point that timely recovery from continued decline is uncertain, Fallon Decl. ¶ 17, and irreparable harm is “sufficiently likely,” *Amoco*, 480 U.S. at 545. In contrast, any financial loss would be limited to a delay in revenue from sales of

Enlist Duo pending review.⁴ While not irrelevant, any projected loss from delayed sales is outweighed by the irreparable harm to monarch butterflies.

As with environmental injuries, human health harms are accorded significant weight in the balancing of equities. “Faced with . . . a conflict between financial concerns and preventable human suffering,” there is “little difficulty concluding that the balance of hardships tips decidedly in favor of the latter.” *Golden Gate Restaurant Ass’n v. City and Cnty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008). Use of Enlist Duo threatens to expose fetuses, infants, and children to dangerous levels of 2,4-D, putting these vulnerable populations at risk of irreversible neurological and developmental harms. Pullen Decl. ¶ 14. These harms far outweigh Dow’s financial interest in any additional revenue from sales of Enlist Duo while this case is pending.

Finally, to the extent that farmers desire immediate access to Enlist Duo to treat weeds, they have access to many other more effective weed control techniques, including a variety of non-chemical methods, while this litigation is pending. *See* Decl. of Dr. Charles Benbrook ¶ 14. Not only is Enlist Duo unnecessary for controlling weeds, but it will actually contribute to the development of glyphosate-resistant weed strains, which is becoming a severe problem in many agricultural areas. *Id.* ¶¶ 12-13, 15.

⁴ NRDC would be amenable to an expedited schedule in this case, to minimize any financial harm to Dow pending review.

Accordingly, the balance of equities tips sharply in favor of a stay, which would advance the public interest by safeguarding monarch butterflies and vulnerable human populations.

* * *

For the reasons set forth above, NRDC respectfully requests that the Court stay EPA's registration of Enlist Duo pending review.

Dated: December 18, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of Petitioner NRDC's Motion for Stay

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