

No. 08-35528

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED FARM WORKERS; SEA MAR COMMUNITY HEALTH CENTER;
PINEROS Y CAMPESINOS UNIDOS DEL NOROESTE; BEYOND
PESTICIDES; FRENTE INDIGENA DE ORGANIZACIONES
BINACIONALES; and ARNULFO LOPEZ,
Plaintiffs-Appellants,

v.

ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY,
Defendant-Appellee,
and
GOWAN COMPANY, MAKHTESHIM AGAN of NORTH
AMERICA, INC, and BAYER CROPSCIENCE LP,
Defendant-Intervenor-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
Civ. No. 04-0099-RSM

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SANTA
CLARA COUNTY IN SUPPORT OF APPELLANTS IN SUPPORT OF
REVERSAL**

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Attorneys for Amici Curiae

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, Santa Clara County respectfully moves for leave to file a late *amicus curiae* brief. Plaintiffs consent to the filing of this brief, and the Defendant Environmental Protection Agency (“EPA”) does not oppose the filing of this brief. Defendants Makhteshim Agan of North America, Inc., Bayer Cropscience LP, and Gowan Company oppose the filing of this brief.

INTERESTS OF *AMICUS CURIAE*

The County supports the plaintiffs’ arguments on appeal to protect the County’s critical interests in keeping its residents healthy, in avoiding unnecessary healthcare costs to the public hospital system, in safeguarding its local environment, and in maintaining its vibrant local agricultural industry. The County also seeks to retain its ability to bring its knowledge and expertise to bear to help correct mistakes the EPA inevitably will make when reregistering pesticides.

The widespread use of pesticides within County boundaries is the original source of the County’s efforts here to preserve full judicial review over federal reregistration decisions under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). Azinphos-methyl (“AZM”) and phosmet, the two pesticides at issue in this case, both were reported applied in the County in 2006, and phosmet

was reported applied in 2007. Almost a million pounds of active ingredients of pesticides were reported applied in the County in 2007, resulting from the use of almost 500 pesticides; reporting is not required for still more pesticide applications and uses. The County uses pesticides for its own parks, rights of way, jails, waterways, pools, and other property and to combat public health threats.

The County first and foremost has an interest in the health of its thousands of resident children, farmworkers, and others who live close to agricultural areas and who might be harmed by the use of high-toxicity pesticides. The County also has a stake in decreasing its public healthcare expenses for those who might suffer from pesticide-related illnesses. The County similarly is concerned about protecting its environment – parks, streams, lakes, and wildlife – from toxic harms. At the same time, the County is committed to protecting its vibrant agricultural industry, which brings hundreds of millions of dollars a year into the County and creates thousands of jobs. Finally, the County has an interest in utilizing its agricultural and environmental staff's knowledge and expertise about the local effects of pesticides to help correct erroneous federal pesticide reregistration decisions.

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REASONS WHY FILING AN *AMICUS* BRIEF IS DESIRABLE

The County regrets having missed the original deadline for seeking leave to file an *amicus curiae* brief to this Court. The County did not learn about this case until three months after briefing to this Court had concluded. At that point, after investigating the County's substantial interests in the underlying AZM and phosmet agency reregistration decisions and its interests in the issue on appeal and scheduling a date to consider the question, the County Board of Supervisors voted to file an *amicus* brief in this proceeding.

The attached brief describes how the same constraints that prevented the County from learning about this case earlier make the practical effect of the district court's holding so dramatic. The court's erroneous conclusion – that minimal process satisfies the “public hearing” requirement under a FIFRA judicial review provision – could channel into the Courts of Appeals many more challenges to EPA reregistration decisions. This shift entails a shortening of the statute of limitations period from several years to 60 days and imposes other restrictions on challenges. Given that local entities need time to develop and take legal action, the lower court decision effectively foreclosed the only meaningful and feasible option for judicial review that Congress provided to public entities to challenge federal reregistration decisions. Filing suit within 60 days is a near

impossibility for the County, especially when it is not working with an administrative record that has benefited from quasi-adjudicatory agency proceedings.

CONCLUSION

We respectfully request that the Court grant this motion for a late-filed *amicus* brief so that the County can protect its interests in the federal pesticide reregistration process.

Dated: April 21, 2009

Respectfully submitted,

ANN MILLER RAVEL
COUNTY COUNSEL

By: 

TAMARA LANGE
Lead Deputy County Counsel

Attorneys for Amici Curiae

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERTIFICATE OF SERVICE BY MAIL

UNITED FARM WORKERS et al, v. ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.

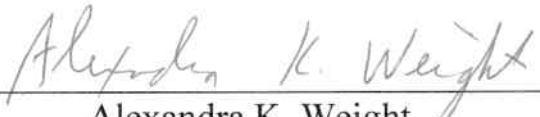
Case No. 08-35528 / U.S. District Court Case No. 04-0099-RSM

I hereby certify that on April 21, 2009, I electronically filed the foregoing **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SANTA CLARA COUNTY IN SUPPORT OF APPELLANTS IN SUPPORT OF REVERSAL** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participant(s):

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