

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, and)	
SAVE OUR SPRINGS ALLIANCE,)	
)	Case No. 1:04CV00126
Plaintiffs,)	
)	
v.)	FEDERAL DEFENDANTS’
)	ANSWER TO COMPLAINT
MICHAEL LEAVITT, in his official capacity as)	FOR DECLARATORY
Administrator for the U.S. Environmental Protection)	AND INJUNCTIVE
Agency, and U.S. ENVIRONMENTAL PROTECTION)	RELIEF
AGENCY,)	
)	
Defendants.)	
)	

**FEDERAL DEFENDANTS’ ANSWER TO PLAINTIFFS’ COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Come now, Federal Defendants, the United States Environmental Protection Agency (“EPA”) and Michael O. Leavitt, in his official capacity as Administrator of the EPA (collectively “Defendants”), and, by and through undersigned counsel, hereby answer and assert the following defenses to the allegations contained within the Center for Biological Diversity’s and Save Our Springs Alliance’s (“Plaintiffs”) Complaint for Declaratory and Injunctive Relief (“Complaint”). The numbered paragraphs in this Answer correspond to the numbered paragraphs in Plaintiffs’ Complaint.

1. The allegations of this paragraph consist of a characterization of Plaintiff’s claims and conclusions of law, to which no response is required. To the extent that a further response is deemed necessary or required, the allegations are denied.

2. The allegations of paragraph 2 constitute a characterization of Plaintiffs' claims and requests for relief, to which no response is required.

3. The allegations of paragraph 3 constitute a characterization of Plaintiffs' claims and requests for relief, to which no response is required.

4. The allegations of this paragraph constitute conclusions of law, to which no response is required.

5. Defendants admit that EPA received a letter from Plaintiffs on September 29, 2003, and the letter speaks for itself and is the best evidence of its contents. Defendants are without information or knowledge sufficient to form a belief as to the truth of Plaintiffs' allegation that Secretary Gale Norton of the Department of Interior similarly was provided and/or received on September 30, 2003 such notice and therefore deny such allegation.

6. The allegations in this paragraphs constitute conclusions of law, to which no response is required.

7. The allegations in this paragraph constitute conclusions of law, to which no response is required.

8. Defendants are without information or knowledge sufficient to form a belief as to the truth of Plaintiffs' allegations in this paragraph and, on that basis, deny such allegations.

9. Defendants are without information or knowledge sufficient to form a belief as to the truth of Plaintiffs' allegations in this paragraph and, on that basis, deny such allegations. In addition, the seventh and eighth sentences of this paragraph constitute conclusions of law, to which no response is required.

10. Defendants are without information or knowledge sufficient to form a belief as to

the truth of Plaintiffs' allegations in the first and second sentences of this paragraph and, on that basis, deny such allegations. In addition, the remaining sentences of this paragraph constitute conclusions of law, to which no response is required.

11. In response to the allegations set out in Paragraph 11, Defendants admit that EPA is a federal agency. The remaining allegations in this paragraph purport to characterize, summarize, and/or quote provisions of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), the Endangered Species Act ("ESA"), and the Federal Food, Drug, and Cosmetic Act ("FFDCA"), as amended by the Food Quality Protection Act ("FQPA"), which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to the plain language and meaning of those statutes.

12. Defendants admit that Michael Leavitt is the Administrator of the EPA, and state that the remaining allegations in Paragraph 12 constitute conclusions of law, to which no response is required.

13. The allegations in paragraph 13 purport to characterize, summarize, and/or quote the ESA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to these paragraphs is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the ESA.

14. The allegations in paragraph 14 purport to characterize, summarize, and/or quote the ESA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to these paragraphs is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are

inconsistent with the ESA.

15. The allegations in paragraph 15 purport to characterize, summarize, and/or quote the ESA and federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to these paragraphs is deemed necessary or required, Defendants deny the allegations in these paragraphs to the extent that they are inconsistent with the ESA and the referenced federal regulations.

16. The allegations in paragraph 16 purport to characterize, summarize, and/or quote the ESA and federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to these paragraphs is deemed necessary or required, Defendants deny the allegations in these paragraphs to the extent that they are inconsistent with the ESA and the referenced federal regulations.

17. The allegations in paragraph 17 purport to characterize, summarize, and/or quote federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced federal regulations.

18. The allegations in paragraph 18 purport to characterize, summarize, and/or quote federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations in to the extent that they are inconsistent with the referenced federal regulations.

19. The allegations in paragraph 19 purport to characterize, summarize, and/or quote

federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to these paragraphs is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced federal regulations.

20. The allegations in paragraph 20 purport to characterize, summarize, and/or quote the ESA and federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the ESA and the referenced federal regulations.

21. The allegations in the first sentence of paragraph 21 consist of a conclusion of law, which requires no response. To the extent that a response is deemed necessary, Defendants deny the allegations. The remaining allegations in this paragraph purport to characterize, summarize, and/or quote the ESA and federal regulations, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the ESA and the referenced federal regulations.

22. The allegations in paragraph 22 purport to characterize, summarize, and/or quote the ESA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the ESA.

23. The allegations in paragraph 23 purport to characterize, summarize, and/or quote the ESA, which speaks for itself and is the best evidence of its contents, and no response is

required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the ESA.

24. The allegations in paragraph 24 purport to characterize, summarize, and/or quote the ESA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the ESA.

25. The allegations in this paragraph consist of conclusions of law which require no response. To the extent that a response is deemed necessary, the allegations are denied.

26. The allegations in the first sentence of paragraph 26 consist of a conclusion of law which requires no response. To the extent that a response is deemed necessary, the allegations are denied. The remaining allegations in this paragraph purport to characterize, summarize, and/or quote FIFRA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations in these paragraphs to the extent that they are inconsistent with FIFRA.

27. The allegations in the first sentence of paragraph 27 consist of a conclusion of law which requires no response. To the extent that a response is deemed necessary, the allegations are denied. The remaining allegations in this paragraph purport to characterize, summarize, and/or quote FIFRA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations in these paragraphs to the extent that they are inconsistent with FIFRA.

28. The first sentence of this paragraph constitutes a conclusion of law, to which no response is required. The second through fourth sentences of this paragraph purport to characterize, summarize, and/or quote FIFRA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to the second through fourth sentences of this paragraph are deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with FIFRA. In response to the allegations in the fifth sentence of this paragraph, Defendants admit that EPA considers information regarding the “unreasonable adverse effects” for any given pesticide, when such information is submitted to EPA.

29. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the last sentence of this paragraph and, on that basis, deny those allegations. The remainder of this paragraph purports to characterize, summarize, and/or quote FIFRA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to the remainder of this paragraph is deemed necessary or required, Defendants deny the allegations in the remainder of this paragraph to the extent that they are inconsistent with FIFRA.

30. In response to the allegations set out in the first sentence of Paragraph 30, Defendants admit that EPA has used and continues to use the reregistration scheme established pursuant to the 1988 amendments to FIFRA. In response to the allegations set out in the last sentence of Paragraph 30, Defendants admit that EPA is making reregistration decisions for some pesticides in accordance with Phase 5 of the reregistration process established under the 1988 amendments to FIFRA. The remaining allegations in this paragraph purport to characterize,

summarize, and/or quote the 1988 amendments to FIFRA, which amendments speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to the remainder of this paragraph is deemed necessary or required, Defendants deny the allegations in the remainder of this paragraph to the extent that they are inconsistent with the 1988 amendments to FIFRA.

31. In response to the allegations set out in the second sentence of Paragraph 31, Defendants admit that the results of EPA reregistration reviews are typically presented in a Reregistration Eligibility Decision (“RED”) document. The remaining allegations in this paragraph purport to characterize, summarize, and/or quote FIFRA, which speaks for itself and is the best evidence of its content, and no response is required. Nonetheless, to the extent that a response to the remainder of this paragraph is deemed necessary or required, Defendants deny the allegations in the remainder of this paragraph to the extent that they are inconsistent with FIFRA.

32. In response to the allegation set out in the first sentence of Paragraph 32, Defendants admit that any given RED typically contains a human health assessment and to the extent appropriate an environmental exposure assessment. Defendants also admit the allegations set out in the third, seventh, and eighth sentences of Paragraph 32. Finally, Defendants admit, in response to the allegations set out in the sixth sentence of Paragraph 32, that these are some of the “basic questions” that EPA generally seeks to answer in determining the environmental fate of a pesticide. However, the allegations set out in the second, fourth, fifth, and ninth sentences of Paragraph 32 are too vague and ambiguous to enable Defendants to admit or deny same, but, to the extent that a response may be deemed necessary or required, the allegations in the second,

fourth, fifth, and ninth sentences of Paragraph 32 are denied as stated.

33. In response to the allegations set out in this paragraph, Defendants admit that the “types of measures” identified by Plaintiffs in this paragraph are among those that may be included identified in a RED to reduce possible risks of concern, should any be identified. Because the type of measure, if any, that is chosen identified may vary in important regards on a pesticide-by-pesticide basis, to the extent that the allegations in this paragraph are inconsistent with this qualification, they are denied.

34. In response to the allegations set out in the first and last sentences of Paragraph 34, EPA admits that Congress amended FIFRA in 1996 through the enactment of FQPA, and that EPA is using the reregistration program under FIFRA to accomplish the tolerance reassessments required under FQPA. The remaining allegations in this paragraph purport to characterize, summarize, and/or quote FQPA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to the remainder of this paragraph is deemed necessary or required, Defendants deny the allegations in the remainder of this paragraph to the extent that they are inconsistent with FQPA.

35. Defendants admit the allegations set out in the first and second sentences of Paragraph 35. Defendants further admit that EPA is issuing IREDs for most organophosphate (“OP”) pesticides, as OPs may share common mechanisms of toxicity. Finally, Defendants further admit that an IRED may identify measures to reduce food, drinking water, residential, occupational, and/or ecological risks. However, Defendants deny as stated all the remaining allegations set out in the third sentence of Paragraph 35.

36. Defendants admit the allegations set out up to the colon in the first sentence of

Paragraph 36. Defendants deny as stated the two allegations, separated by a semi-colon, set out immediately following the colon in the first sentence of Paragraph 36. Defendants admit the final allegation set off by a semi-colon set out immediately following the colon in the first sentence of Paragraph 36. Defendants admit the allegations set out in the last sentence of Paragraph 36.

37. Defendants admit the allegations set out in the first sentence of Paragraph 37. The allegations set out in the second sentence of Paragraph 37, as prefaced by the word “consequently,” are too vague and ambiguous to enable Defendants to admit or deny them, but, to the extent that a response is deemed necessary or required, the allegations in the second sentence of Paragraph 37 are denied as stated.

38. Defendants admit the allegations set out in Paragraph 38.

39. This paragraph in the Complaint contains no allegations. Thus, no response is required.

40. Defendants admit that Barton Springs is located in Zilker Park, Austin, Texas, within Hayes and Travis County, Texas. Defendants lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore deny the same.

41. This paragraph purports to characterize, summarize, and/or quote a USGS document, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced USGS document.

42. The allegations of this paragraph purport to characterize or summarize the contents of a Federal Register notice, which is the best evidence of its contents and speaks for itself. To the extent a response is deemed necessary or required, Defendants admit that the Barton Springs salamander is listed as “endangered” under the ESA and that it is found in Barton Springs, and deny the remaining allegations of this paragraph.

43. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations set out in the first three sentences of this paragraph and, on that basis, deny those allegations. Defendants deny the allegations in the fourth and fifth sentences of paragraph 43.

44. The allegations set out in Paragraph 44 are too vague and ambiguous to enable Defendants to admit or deny same, but, to the extent that a response may be deemed necessary or required, the allegations in Paragraph 44 are denied as stated.

45. The allegations set out in this paragraph purport to characterize, summarize, and/or quote a Fish and Wildlife Service (“FWS”) Federal Register document that lists the Barton Springs salamander for purposes of the ESA. This Federal Register document speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations set out in this paragraph to the extent that they are inconsistent with the referenced Federal Register document.

46. This paragraph purports to characterize, summarize, and/or quote a letter from FWS to EPA, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or

required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced letter.

47. Defendants deny as stated the allegation set out in Paragraph 47.

48. The first sentence of Paragraph 48 purports to characterize, summarize, and/or quote three studies on carbamates, organophosphates, and triazines, which studies speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to the allegations set out in the first sentence of this paragraph is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced studies. Defendants admit the allegations set out in the second and third sentences of this paragraph. Defendants further admit that endocrine disruption may affect how an organism develops and functions. The allegations in the fourth sentence of this paragraph are too vague and ambiguous to enable Defendants to admit or deny same, but, to the extent that a response may be deemed necessary or required, the allegations in the fourth sentence of paragraph 48 are denied as stated.

49. This paragraph purports to characterize, summarize, and/or quote a study on endosulfan exposure, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced study.

50. This paragraph purports to characterize, summarize, and/or quote a USGS atrazine study, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or

required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced USGS study.

51. This paragraph purports to characterize, summarize, and/or quote a study on the pesticide carbaryl, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced carbaryl study.

52. Defendants admit that EPA's newly drafted criteria for atrazine for the protection of aquatic life is 12 parts per billion. The remaining allegations set out in this paragraph purport to characterize, summarize, and/or quote a study on the herbicide atrazine, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to the remaining allegations in this paragraph is deemed necessary or required, Defendants deny such allegations to the extent that they are inconsistent with the referenced atrazine study.

53. This paragraph purports to characterize, summarize, and/or quote a study on the reproductive system of frogs, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced study on the reproductive system of frogs.

54. This paragraph purports to characterize, summarize, and/or quote a study on trematode infection and pesticide exposure, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this

paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced study.

55. This paragraph purports to characterize, summarize, and/or quote a study on tadpole skeletal malformations, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced tadpole skeletal malformations study.

56. This paragraph purports to characterize, summarize, and/or quote a study on tadpole testicular development, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced tadpole testicular development study.

57. This paragraph purports to characterize, summarize, and/or quote a USGS study on pesticides and amphibian populations in California, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced USGS study on pesticides and amphibian populations in California.

58. The allegations in the first sentence of paragraph 58 are too vague and ambiguous to enable Defendants to admit or deny them, but to the extent that a response is deemed necessary or required, the allegations in the first sentence are denied. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the

second sentence of Paragraph 58 and, on that basis, deny those allegations. The allegations in the third sentence of this paragraph are too vague and ambiguous to enable Defendants to admit or deny same, but, to the extent that a response may be deemed necessary or required, the allegations this sentence are denied as stated.

59. Defendants admit that the pesticides atrazine, prometon, simazine, carbaryl, metolachlor, and diazinon currently are registered for use by EPA.

60. Defendants admit that atrazine is a triazine herbicide used to control broadleaf and grassy weeds, that EPA released a revised environmental risk assessment for atrazine on April 22, 2002, that EPA released an IRED for atrazine in January 2003, and that EPA released a revised IRED for atrazine in October 2003. Defendants deny as stated all remaining allegations set out in this Paragraph 60.

61. Defendants admit that atrazine is registered for use as alleged the allegations set out in Paragraph 61.

62. Defendants admit the allegation set out in the first sentence of Paragraph 62. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegation set out in the second sentence of Paragraph 62 and, on that basis, deny that allegation. The third sentence of this paragraph purports to characterize, summarize, and/or quote the Texas Environmental Profiles, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to the third sentence of this paragraph is deemed necessary or required, Defendants deny the allegation in the third sentence of this paragraph to the extent that it is inconsistent with the referenced Texas Environmental Profiles.

63. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations set out Paragraph 63 and, on that basis, deny those allegations.

64. This paragraph purports to characterize, summarize, and/or quote EPA's April 22, 2002, revised environmental risk assessment for atrazine, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced revised environmental risk assessment.

65. The allegations in paragraph 65 purport to characterize, summarize, and/or quote EPA's revised risk assessment, IRED and revised IRED for atrazine, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced revised risk assessment, IRED and revised IRED for atrazine.

66. The allegations in paragraph 66 purport to characterize, summarize, and/or quote EPA's revised risk assessment, IRED and revised IRED for atrazine, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced revised risk assessment, IRED and revised IRED for atrazine.

67. The allegations in paragraph 67 purport to characterize, summarize, and/or quote EPA's revised risk assessment, IRED and revised IRED for atrazine, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the

extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced revised risk assessment, IRED and revised IRED for atrazine.

68. The allegations in paragraph 68 purports to characterize, summarize, and/or quote EPA's revised risk assessment, IRED and revised IRED for atrazine, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced revised risk assessment, IRED and revised IRED for atrazine.

69. Defendants admit that EPA consulted with FWS concerning atrazine use in 1983 (the sorghum cluster) and in 1984 (the rangeland/pastureland and forest cluster). Defendants further admit that EPA consulted with FWS in 1989 concerning the use of atrazine on field crops, rangeland, and forests. The remaining allegations set out in this paragraph purport to characterize, summarize, and/or quote FWS biological opinions from 1983, 1984, and 1989, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to these remaining allegations is deemed necessary or required, Defendants deny the remaining allegations in the first through eighth sentences of this paragraph to the extent that they are inconsistent with the referenced FWS biological opinions. Defendants admit the allegations in the ninth sentence of this paragraph.

70. Defendants admit the allegations set out in Paragraph 70.

71. Defendants admit the allegations set out in Paragraph 71.

72. Defendants admit the allegations set out in the first and second sentences of

Paragraph 72. Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining allegations set out Paragraph 63 and, on that basis, deny those allegations.

73. Defendants deny as stated the allegations set out in Paragraph 73.

74. The allegations in this paragraph purport to characterize, summarize, and/or quote EPA's July 2002 diazinon IRED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced EPA diazinon IRED.

75. The allegations in this paragraph purport to characterize, summarize, and/or quote EPA's July 2002 diazinon IRED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced EPA diazinon IRED.

76. The first two sentences of this paragraph purport to characterize, summarize, and/or quote a 1989 FWS biological opinion, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to these two sentences of this paragraph is deemed necessary or required, Defendants deny the allegations in the first two sentences of this paragraph to the extent that they are inconsistent with the referenced 1989 FWS biological opinion. The last sentence of this paragraph purports to characterize, summarize, and/or quote EPA's July 2002 diazinon IRED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent

that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced EPA diazinon IRED.

77. Defendants admit the allegations in paragraph 77.

78. Defendants admit the allegations in paragraph 78.

79. Defendants admit that simazine is a triazine and that it is registered for use as alleged in this Paragraph 79.

80. The allegations in this paragraph purport to characterize, summarize, and/or quote a Federal Register document, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced Federal Register document.

81. The allegations in this paragraph purport to characterize, summarize, and/or quote a Federal Register document, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced Federal Register document.

82. Defendants admit the allegations set out in Paragraph 82.

83. The allegations in this paragraph are overly vague and ambiguous, and accordingly Defendants are unable to respond to these allegations. To the extent a response is deemed necessary or required, the allegations are denied.

84. This paragraph purports to characterize, summarize, and/or quote an EPA

Registration Standard for simazine and a 1985 Federal Register document, which speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced EPA Registration Standard for simazine and the referenced 1985 Federal Register document.

85. Defendants deny as stated the allegations set out in the first sentence of Paragraph 85. Defendants admit the allegations set out in the second and third sentences of this Paragraph 85.

86. This paragraph purports to characterize, summarize, and/or quote a 1989 biological opinion, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced 1989 biological opinion.

87. Defendants admit the allegations in paragraph 87.

88. Defendants admit the allegations in paragraph 88.

89. Defendants admit that prometon is a nonselective triazine and that it is registered for use used as alleged in this Paragraph 89.

90. Defendants admit the allegations set out in this Paragraph 90.

91. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations set out in paragraph 91 and, on that basis, deny that allegations.

92. The allegations set out in Paragraph 92 are too vague and ambiguous to enable Defendants to admit or deny same, but, to the extent that a response may be deemed necessary or

required, the allegations in Paragraph 92 are denied as stated.

93. The allegations set out in Paragraph 93 are too vague and ambiguous to enable Defendants to admit or deny same, but, to the extent that a response may be deemed necessary or required, the allegations in Paragraph 93 are denied as stated.

94. Defendants deny as stated the allegations set out in the first sentence of Paragraph 94. Defendants admit the allegations set out in the second sentence of in this Paragraph 94.

95. Defendants admit the allegations in paragraph 95.

96. This paragraph purports to characterize, summarize, and/or quote EPA's carbaryl IRED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced carbaryl IRED.

97. Defendants admit that EPA released the carbaryl IRED in June 2003.

98. This paragraph purports to characterize, summarize, and/or quote EPA's carbaryl IRED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are inconsistent with the referenced carbaryl IRED.

99. This paragraph purports to characterize, summarize, and/or quote EPA's carbaryl IRED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to this paragraph is deemed necessary or required, Defendants deny the allegations in this paragraph to the extent that they are

inconsistent with the referenced EPA carbaryl IRED.

100. The first two sentences of this paragraph purport to characterize, summarize, and/or quote a 1989 FWS biological opinion, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response to these two sentences of this paragraph is deemed necessary or required, Defendants deny the allegations in the first two sentences of this paragraph to the extent that they are inconsistent with the referenced 1989 FWS biological opinion. In response to the allegations of the third sentence of this paragraph, Defendants state that these allegations characterize, summarize and/or quote EPA's carbaryl IRED and/or EPA's diazinon IRED, which speak for themselves, and are the best evidence of their contents, and no further responses is required. To the extent a response is deemed necessary or required, Defendants deny the allegations in the third sentence to the extent that they are inconsistent with the reference IREDS. In response to the allegations in the fourth sentence of this paragraph, Defendants admit that EPA currently is in consultation with NMFS regarding the impact of carbaryl on Pacific salmonid species listed under the ESA, and deny the remaining allegations.

101. Defendants admit the allegations in paragraph 101.

102. Defendants admit that metolachlor is a persistent and mobile broad spectrum herbicide and that it is registered for use used as alleged in Paragraph 102.

103. Defendants admit that EPA released the metolachlor RED in April 1995 and the metolachlor TRED in June 2002.

104. The allegations in paragraph 104 purport to characterize, summarize, and/or quote EPA's metolachlor RED, which speaks for itself and is the best evidence of its contents, and no

response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations to the extent that they are inconsistent with the referenced metolachlor RED.

105. These allegations in paragraph 105 purport to characterize, summarize, and/or quote EPA's metolachlor RED, which speaks for itself and is the best evidence of its contents, and no response is required. Nonetheless, to the extent that a response is deemed necessary or required, Defendants deny the allegations in these paragraphs to the extent that they are inconsistent with the referenced metolachlor RED.

106. Defendants admit the allegations of paragraph 106.

107. Defendants deny the first sentence of paragraph 107. Defendants admit the allegations in the second sentence of paragraph 107.

108. Defendants' responses to all preceding paragraphs are incorporated by reference as if fully stated herein.

109. The allegations in this paragraph constitute conclusions of law, to which no response is required. In addition, the ESA and FIFRA statutory provisions that are characterized and/or summarized in this paragraph speak for themselves and are the best evidence of their contents, and no response is required. Nonetheless, to the extent that a response to these characterizations is deemed necessary or required, Defendants deny the allegations of this paragraph to the extent that they are inconsistent with the ESA and FIFRA.

110. The allegations in this paragraph constitute conclusions of law, to which no response is required. To the extent that a further response to this paragraph is deemed necessary or required, the allegations as stated are denied.

111. Defendants' responses to all preceding paragraphs are incorporated by reference as if fully stated herein.

112. The allegations in this paragraph constitute conclusions of law, to which no response is required. To the extent that a further response to this paragraph is deemed necessary or required, the allegations as stated are denied.

PRAYER FOR RELIEF

The remainder of the Complaint consists of Plaintiffs' Prayer for Relief and requires no response. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

GENERAL DENIAL

Defendants hereby deny each and every allegation, explicit or implicit, in Plaintiff's Complaint not specifically admitted, denied, or qualified herein, including Plaintiff's claims and requests for relief.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert some or all of the claims raised in the Complaint.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over some or all of Plaintiffs' claims.

THIRD AFFIRMATIVE DEFENSE

Some or all of the claims asserted in the Complaint are not ripe for adjudication.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

Venue is not appropriately vested with this Court, or may be more appropriate in another court.

SIXTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims are barred by res judicata.

EIGHTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims are barred by the doctrine of laches.

WHEREFORE, having fully answered, Defendants pray that judgment be entered for Defendants, that this action be dismissed with prejudice, that the Court order each party to bear their own costs and fees, and that the Court grant Defendants such other and further relief as may be appropriate.

Respectfully submitted this 5th day of April, 2004.

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/s/ _____
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