



**Mosquito and Vector Control  
Association of California**  
1215 K Street, Suite 2290  
Sacramento, CA 95814  
p: 916.440.0826 f: 916.231.2141  
[www.mvcac.org](http://www.mvcac.org)

September 2, 2011

Secretary Matthew Rodriguez  
California Environmental Protection Agency  
1001 I Street, P.O. Box 2815  
Sacramento, CA 95812-2815

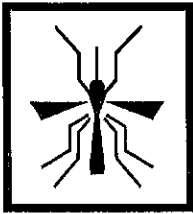
Dear Secretary Rodriguez:

As representatives of the Mosquito and Vector Control Association of California, we are contacting you, on behalf of our 66 member agencies, to respectfully request your support of H.R. 872, "The Reducing Regulatory Burdens Act of 2011." H.R. 872 was introduced in response to a new Clean Water Act (Act) NPDES permit requirement that now mandates public agencies who apply pesticides to protect public health obtain an NPDES permit. We ask that you discuss this important matter with California Department of Pesticide Regulation Chief Deputy Director Christopher Reardon and then confer with California Department of Food and Agriculture Secretary Karen Ross and California Health and Human Services Agency Secretary Diana S. Dooley about this extremely important issue. Our hope is that you will communicate your collective support of H.R. 872 to Governor Jerry Brown and ask him to contact California U.S. Senators Barbara Boxer and Dianne Feinstein to solicit their support of H.R.872 and urge Senator Boxer to lift her hold of the bill. H.R. 872 is fiscally responsible legislation protecting the health of California's citizen and our environment.

H.R. 872 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Water Pollution Control Act to clarify the intent of Congress regarding the regulation of pesticides. Specifically, it would direct federal and state governments not to require an NPDES permit under the Federal Pollution Control Act for discharge of a pesticide or residue registered under FIFRA with a few limited exceptions.

H.R. 872 addresses a duplicative regulatory burden since these pesticides are already regulated under FIFRA. Mosquito control pesticides are necessary to protect human and animal health. As you know, all pesticides, including agricultural and public health pesticides (such as those used to control mosquitoes and prevent mosquito-borne diseases), undergo a stringent regulatory process for registration under FIFRA. They are given explicit labeling which regulates their uses to protect the public and the environment, including waters of the U.S. These beneficial pesticide uses were not intended to require an NPDES permit because the testing and regulations required under FIFRA already provide that protection. The congressional intent of such permits, which had been recognized for 30 years since the enactment of the Act, was to minimize and prevent the discharge of municipal, commercial and industrial pollutants into the nation's waterways, and not to further regulate beneficial pesticide use.

In 2010, West Nile virus sickened 1,021 people in the United States with 629 severe cases infecting the nervous system. There were 57 deaths. In California, WNV resulted in 111 symptomatic cases of human disease and six deaths. In addition, there were 93 cases of disease caused by other mosquito-borne viruses. Mosquito control is the only way to reduce the burden of these diseases on human health.



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Without passage of H.R. 872, mosquito control pesticides will soon be regulated as pollutants, even though they are deliberately and beneficially applied to water and they have been extensively tested under FIFRA with regard to their impact on non-target animals and their environmental fate.

The cost of complying with the NPDES permit system will be very high, but will have very little effect on water quality. Mosquito control accounts for only a fraction of the pesticides applied in California and the materials used are very low in toxicity. Yet the cost of operating under a permit that considers these materials as pollutants will be very high. At a hearing of the California State Water Resources Control Board on March 1, 2011, a water board staff member testified that the permit was expected to cost between \$200,000 and \$600,000 annually for every discharging agency.

Mosquito control agencies in California are some of the most advanced programs in the country. We operate under Integrated Vector Control Plans designed to minimize impacts to the environment while protecting public health. Our programs are based on scientific research which defines the problem, investigates the biology of the vector, and directs control to the places where vectors occur. We have been at the forefront of implementing new environmentally safe products for many years. This permit will limit our ability to do effective control by causing our materials to be regulated as a pollutant discharge and diverting resources away from disease surveillance and control operations.

Joint letters in support of H.R. 872 have already been sent from 20 California State Senators and Legislators; governors of six western states and presidents of the boards of four western associations representing agriculture, pesticides and forestry. We are including copies of those letters for your information.

We look forward to an opportunity to meet with you or your staff at any time to further discuss our request. Please have your staff contact MVCAC Executive Director Catherine Smith at (916) 440-0826 to schedule a meeting.

On behalf of MVCAC members and the constituents they protect, we want to thank you for consideration of our request for support of H.R. 872.

Most sincerely,

Robert Gay  
President

Catherine Smith  
Executive Director

**Attachments:**

List of MVCAC member agencies and general managers  
H.R. 872 Fact Sheet  
Joint letter from members of the California Legislature  
Joint letter from association presidents  
Joint letter from six western state governors

**Alameda County MAD**  
*John R. Rusmisl*

**Alameda County VCSD**  
*Lucia T. Hui MS*

**Antelope Valley MVCD**  
*Cei D. Kratz*

**Burney Basin MAD**  
*Michael Churney*

**Butte County MVCD**  
*Matthew C. Ball*

**City of Alturas**  
*Chester Robertson*

**City of Blythe**  
*Kevin Nelson*

**City of Moorpark/VC**  
*John Brand*

**Coachella Valley MVCD**  
*Branka Bozicic Lothrop PhD*

**Coalinga-Huron MAD**  
*Ralph Baiza*

**Colusa MAD**  
*David B. Whitesell*

**Compton Creek MAD**  
*Mitchel R. Weinbaum*

**Consolidated MAD**  
*Steve Mulligan*

**Contra Costa MVCD**  
*Craig Downs*

**Delano MAD**  
*Gary M. Johnson*

**Delta VCD**  
*Michael W. Alburn*

**Durham MAD**  
*Aaron Amator*

**East Side MAD**  
*Lloyd Douglass*

**El Dorado County Environmental  
Management**  
*Karen Bender REHS, RD*

**Fresno MVCD**  
*Tim Phillips*

**Fresno Westside MAD**  
*Elizabeth Cline*

**Glenn County MVCD**  
*Jack F. Cavier Jr.*

**Greater LA County VCD**  
*Kenneth L. Bayless*

**Imperial County Vector Control**  
*Timothy Hodgkin*

**June Lake Public Utility District**  
*Richard Ciauri*

**Kern MVCD**  
*Robert Quiring*

**Kings MAD**  
*Michael Cavanagh*

**Lake County VCD**  
*Jamesina J. Scott Ph.D.*

**Long Beach Vector Control  
Program**  
*Nelson Kerr*

**Los Angeles West Vector and  
Vector-borne Disease Control  
District**  
*Robert Saviskas*

**Madera County MVCD**  
*Leonard Irby*

**Mammoth Lakes MAD**  
*Stephen Ganong*

**Marin/Sonoma MVCD**  
*James Wanderscheid*

**Merced County MAD**  
*Allan D. Inman*

**Mosquito and Vector Management  
District of Santa Barbara County**  
*Brian N. Passaro MPA*

**Napa County MAD**  
*Wesley Maffei*

**Nevada County Community  
Development Agency**  
*Peggy Zariello*

**No. Salinas Valley MAD**  
*Dennis D. Boronda*

**Northwest MVCD**  
*Major S. Dhillon Ph.D.*

**Orange County VCD**  
*Michael Hearst*

**Oroville MAD**  
*Jeffrey M Cahn*

**Owens Valley MAP**  
*Jerrold Oser*

**Pasadena Public Health  
Department**  
*William Kimura*

**Pine Grove MAD**  
*Scott Heringer*

**Placer MVCD**  
*Mr. Joel Buettner M.S.*

**Riverside County, Dept of  
Environmental Health VCP**  
*Keith Jones*

**Sacramento-Yolo MVCD**  
*David Brown*

**Saddle Creek Community Services  
District**  
*Greg Hebard*

**San Benito County Agricultural  
Commission**  
*Ronald Ross*

**San Bernardino County**  
*Terri Williams*

**San Diego County Dept. of  
Environmental Health, Vector  
Control**  
*Rebecca Lafreniere*

**San Francisco Public Health,  
Environmental Health Section**  
*Nader Shatara*

**San Gabriel Valley MVCD**  
*Steve West*

**San Joaquin County MVCD**  
*John R. Stroh*

**San Mateo County MVCD**  
*Robert Brian Gay M.S. Entomology*

**Santa Clara County VCD**  
*Mr. Russell B Parman M.A.*

**Santa Cruz County MVCD**  
*Paul L Binding*

**Shasta MVCD**  
*Peter Bonkrude*

**Solano County MAD**  
*Jon A. Blegen*

**South Fork Mosquito Abatement  
District**  
*Genel Hodges*

**Sutter-Yuba MVCD**  
*Ronald McBride*

**Tehama County MVCD**  
*Andrew Cox*

**Tulare Mosquito Abatement District**  
*Marshall Norgaard*

**Turlock MAD**  
*David E Heft*

**West Side MVCD**  
*Margy Tims*

**West Valley MVCD**  
*Min-Lee Cheng Ph.D.*

# THE TRUTH ABOUT HR 872

## What does HR 872 mean for the environment and human health?

- The Label IS the Law - Registration and labeling of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires that EPA ensure that the use of a pesticide result in 'no unreasonable adverse effect' to humans or the environment, including water quality, and labels are crafted to minimize impacts. The FIFRA label is the law: users who do not follow the label are in violation of federal law.
- Pesticide Laws Protect Water Quality - FIFRA regulations are already in place to identify Clean Water Act 'listed' water bodies where a pesticide scheduled for registration review is the cause or potential cause of impairment. If a currently registered pesticide is a cause of concern for water quality, changes are made to the registration and use of that product to address the concern to protect water quality.
- No Widespread Impairments - Despite activists' allegations, *very* few US waters are listed as impaired by a *currently registered* pesticide. Even where a currently registered pesticide is a concern for a water body, pesticide regulations allow for use restrictions to be put into place to protect water quality.
- It's a Permit to Discharge! – Activists' talking points are flat wrong – permits granted under the Clean Water Act do *not* prevent pollutants from being discharged into our waterways. The National Pollutant Discharge Elimination Permit (NPDES) is in fact a permit *to* discharge! In the case of pesticides, it's a permit to discharge a substance that is already evaluated by EPA for impacts to water quality...no other permitted discharge is double regulated by EPA!
- The Fish Myth – Fish kills have occurred from the misapplication of pesticides. In those circumstances, existing pesticide and water laws were violated, and enforced against. HR 872 does not change existing law as it relates to misapplication of pesticides, either under FIFRA or the Clean Water Act. Filling out paperwork and paying a fee to get a permit will *not* prevent fish kills: following the pesticide label will!
- Protecting Human Health - Eastern Equine Encephalitis, Japanese Encephalitis, La Crosse Encephalitis, St. Louis Encephalitis, West Nile Virus, Western Equine Encephalitis, Dengue Fever, Malaria, Rift Valley Fever and Yellow Fever are just some of the mosquito-borne diseases that regularly threaten human health in the US. HR 872 would ensure that EPA's permit does not disrupt *effective, timely* control of this serious pest threat.
- Forest Health & Invasive Species - EPA's permit will limit the use of pest control as a forest management tool, resulting in increased tree mortality and a general decline in overall forest health. The permit will also create barriers to the control of pests, such as Gypsy Moth and Forest Tent Caterpillar. This may result in a higher incidence of preventable tree kills and defoliated landscapes.

# THE TRUTH ABOUT HR 872

## The Real Story of USGS Data...

Many references are made to the USGS report “The Quality of Our Nation’s Waters – Pesticides in the Nation’s Streams and Ground Water, 1992-2001.” Here is what the activists are *not* telling you:

- Detections don’t mean there’s a problem! - ‘At least one pesticide was detected generally below levels of concern in waters from all streams studies, and pesticide compounds were detected throughout most of the year in water from streams with agricultural...land-use watersheds.’ This was likely an expected result because, “*USGS analytical methods were designed to measure concentrations as low as economically and technically feasible. By this approach...pesticides were commonly detected at concentrations far below Federal or State standards and guidelines for protecting water quality. Detections of pesticides do not necessarily indicate that there are appreciable risks to human health, aquatic life, or wildlife.*” (2006 Report, p. 33). Most of the 75 products actually studied were found at either not detected or detected very infrequently.
- Keeping Perspective - We understand from the 2006 report that the agricultural watershed land-use criteria for NAWQA selection were that the sites had greater than 50% agricultural land use and less than or equal to five percent urban land use (p. 32). With more than 300 million acres of harvested cropland (USDA-ERS). However, the 2006 report’s map of NAWQA agricultural watershed sampling sites (p. 37) suggests that the 83 agricultural watersheds and basins selected may have had the additional selection criterion of providing the greatest likelihood of pesticide detections, which could have had the effect of biasing the total percentage of “*agricultural detections*” in the study. Monitoring sites selected were often closely bunched within discrete regions of targeted states while many other agricultural regions and states were either completely or largely ignored.
- Stewardship Matters! - The NAWQA study was initiated almost 20 years ago, and *many of the product detections declined* throughout the study because of forces such as changes in agricultural management practices, advances in science, market forces, and regulations. A newer, 2009 USGS report, “*Pesticide Levels Decline in Corn Belt Rivers,*” referenced lower detections from 1996 to 2006 (<http://pubs.usgs.gov/sir/2009/5132/>), but concluded that, overall, use is the most dominant factor driving changes in detected concentrations in sampled water. Referencing the House hearing statement of Dr. Sullivan, lead author of the 2009 report, in which the reported concentration downtrends for several important Corn Belt pesticides from 1996 to 2006 “*indicat[e] the possibility that agricultural management practices may have increasingly reduced transport to streams...*”

# THE TRUTH ABOUT HR 872

## What does HR 872 mean for pesticide users and applicators?

- What's the big deal? - EPA's own analysis suggests that the NPDES permits program for pesticides will result the single greatest expansion of the program in its history, covering approximately 5.6 million covered pesticides applications per year by at least 365,000 applicators. Those affected include state agencies, city and county municipalities, mosquito control districts, water districts, pesticide applicators, farmers, ranchers, forest managers, scientists and many others.
- Who is Covered, and Who is at Risk? - EPA's current general permit is intended to cover applications of pesticides registered for aquatic use and applied to water or forest canopies into or over flowing or seasonal waters, and conveyances to those waters. It was the numerous activist lawsuits against both agricultural and non-ag users of aquatic and terrestrial pesticides that led to Congress seeking to clarify the intention of Clean Water Act. *The very same groups who oppose HR 872 make no secret of their intention to continue their citizen suits until all pesticide applications are permitted if there is even a chance that the pesticide could come in contact with any "water," either flowing water or seasonal drainage ditches that could be a conveyance to a water of the US.*
- This How We Got Here - Nothing in the Clean Water Act or the permit protects *against* citizen suits against farmers or terrestrial applicators for not obtaining a permit. This establishes an uncertain liability for farmers and ranchers, as well as users applying pesticides to golf courses and public utility rights of way, and private homes and businesses.
- ESA's New Twist - After a year of consultation, the National Marine Fisheries Service (NMFS) recently concluded in its draft biological opinion (BiOp) that implementation of EPA's Pesticide General Permit, as currently written, would likely jeopardize the continued existence of 33 species of salmon, steelhead, smelt, sturgeon, and whales listed as endangered or threatened under the Endangered Species Act (ESA) and 29 habitats listed as critical to the survival of those species. NMFS proposed a Reasonable and Prudent Alternative (RPA) that would require significant and burdensome changes to the permit. The BiOp *expands the scope* of permitted users and *increases the burden* of permit compliance because the RPA...
  - ✓ Restricts the choices of pesticides available, regardless of whether the product is EPA-approved for a particular use
  - ✓ Requires any pesticide-application 'decision maker' in the range of listed species to file a Notice of Intent (NOI) and Annual Report - this includes individual homeowners, small housing developments, voluntary lake management organizations, and small towns – regardless of size of the entity or treatment area.
  - ✓ Directs NMFS to consult on every decision. For pesticide applications in the range of listed species, NMFS wants a 30-day review of *all* NOIs submitted.
  - ✓ Makes no attempt to demonstrate economic and technical feasibility.



# THE TRUTH ABOUT HR 872

## What does HR 872 mean for states?

- \$\$\$\$\$ and Time - States are and will continue to spend millions of dollars and dedicate thousands of man-hours writing, implementing and enforcing a permit that most regulators believe does little if anything to further protect water quality.
- 'Why are We Doing This?' - Paraphrasing a state regulators comments during a recent House hearing, 'When regulators are looking at how to develop this permit, they look at what the [general] permit will do protect water quality in addition to what the FIFRA label already requires. In this case, the permit doesn't add any real protection: registration and labeling of the pesticides already does as much as the general permit would require. So, now regulators and users are left with a paperwork exercise.'
- ESA Requirement for Some States - Despite claims that ESA compliance only applies in states where EPA implements the permit directly (i.e., non-delegated states), some states have state laws that require them to include all federal ESA requirements in their implementation of any federal law. Any ESA requirements ultimately included in the permit will very much affect many states and users.
- Existing State Permits *Not* Affected - The bill will *not* affect state regulatory programs created under state authority, or programs created based on states' authority to make regulations more stringent than required under federal law. Existing state permits established under these authorities are not affected by the HR 872.

# THE TRUTH ABOUT HR 872

## What does HR 872 mean for EPA?

- Pesticides ARE Regulated - EPA has repeatedly said that the current pesticide permitting process under FIFRA provides sufficient environmental protection for pesticide applications over water. "*EPA uses its full regulatory authority under FIFRA to ensure that pesticides do not cause unreasonable adverse effects on human health or the environment, including our nation's water resources,*" said Steven Bradbury, director of EPA's Office of Pesticide Programs (*E&E Daily*, Feb. 17).
- Cost-Prohibitive ESA Monitoring - The NMFS RPA would require EPA to conduct within two years a program to monitor pesticide treated water bodies to determine if listed species and habitats are exposed to pesticides at concentrations, intensities, durations or frequencies that produce physical, physiological, behavioral, or ecological responses with individual or cumulative adverse consequences for individual organisms or habitat. Even with a two-year lead, it is highly unlikely in this economic climate that EPA would have or be able to obtain the resources to undertake such a massive project.
- Where's FWS? The NMFS BiOp RPA includes no consideration of species and habitats beyond NMFS' jurisdiction, and provides no insight to stakeholders regarding initiation, progress, or results of a corresponding consultation or Biological Opinion from the US Fish and Wildlife Service (FWS). Without official input from FWS, activists will view the permit as not complying with the ESA and are likely to sue accordingly.
- Status Quo - Legally, HR 872 maintains the status quo – it merely returns the EPA's enforcement authority back to where the agency believed the law to be prior to the National Cotton Council ruling by the 6<sup>th</sup> Circuit. Remember, it was EPA's 2006 rule exempting pesticide applications from the Clean Water Act that led us to the misguided ruling from the 6<sup>th</sup> Circuit. As a matter of fact, EPA provided technical assistance in the drafting of the legislation to ensure that the bill corrects the error of the court – no more, no less.

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0031  
(916) 319-2031  
FAX (916) 319-2131

DISTRICT OFFICE  
2660 MARISPOSA MALL, ROOM 6031  
FRESNO, CA 93721  
(559) 445-6632  
FAX (559) 445-6006

E-MAIL

assemblymember.perea@assembly.ca.gov

Assembly  
California Legislature



HENRY T. PEREA  
ASSEMBLYMEMBER, THIRTY-FIRST DISTRICT

COMMITTEES  
CHAIR: REVENUE AND TAXATION  
GOVERNMENTAL ORGANIZATION  
BANKING AND FINANCE  
AGRICULTURE

June 2, 2011

The Honorable Senator Barbara Boxer  
United States Senate  
112 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Boxer:

The undersigned members of the California State Legislature write to support HR 872 "Reducing Regulatory Burdens Act of 2011," regarding a regulatory development we believe will have a major impact on the abilities of our local mosquito and vector control agencies to protect the health of Californians and all Americans.

The State Water Resources Control Board recently adopted a permitting program for Residual Pesticide Discharges for Vector Control Applications in response to a 6th Circuit Court of Appeals ruling. The decision reinterpreted the Clean Water Act (CWA) and brought these public health pesticide applications within the CWA jurisdiction "*if the application is in, over or near waters of the United States.*" This change constitutes a considerable increase in the scope of the original statute and we believe ignores both the original intent of the legislation and the successful vector control practices in place for over 30 years. Complying with the provisions of the permit will significantly increase costs to the State of California and local government agencies that provide mosquito abatement services to protect public health and welfare, without providing any significant environmental benefit.

Public health pesticide applications help prevent outbreaks of mosquito-borne diseases like West Nile virus and the products used are fully regulated by the U. S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as a part of the pesticide registration process. In California, these products are further regulated by the California EPA.

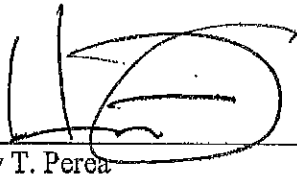
The U.S. EPA has conservatively estimated that the paperwork burden resulting from this new permitting requirement will exceed \$50 million nationally. California State Water Board staff reports that compliance with the State permit would cost approximately \$200,000.00 to \$600,000.00 per applicator, an amount that exceeds the annual revenues of twenty percent of the mosquito control agencies in California. This would have a profound impact on the health and welfare of our people, especially those most vulnerable to mosquito-borne diseases.



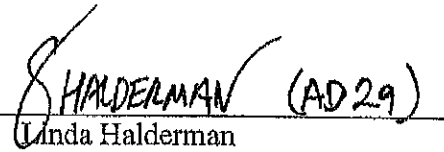
In an effort to address this issue, HR 872 was recently passed in the House of Representatives with strong bipartisan support. This legislation clarifies Congressional intent regarding the regulation of the use of pesticides in or near navigable waterways.

We ask you to support HR 872 or companion Senate legislation that will clarify and resolve this issue. Thank you for your consideration of this issue. Should you have any questions, please do not hesitate to contact my office at 916-319-2031.

Sincerely,



Henry T. Perea  
Assemblymember, 31<sup>st</sup> District



Linda Halderman  
Assemblymember, 29<sup>th</sup> District



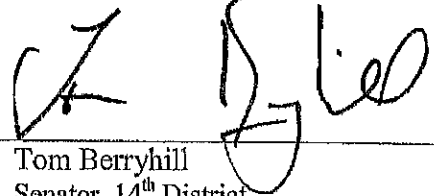
David G. Valadao  
Assemblymember, 30<sup>th</sup> District



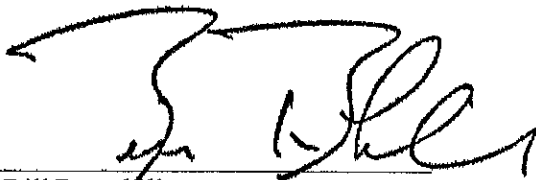
Michael J. Rubio  
Senator, 16<sup>th</sup> District



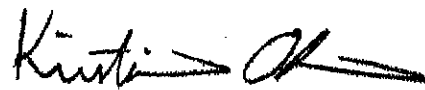
Joan Buchanan  
Assemblymember, 15<sup>th</sup> District



Tom Berryhill  
Senator, 14<sup>th</sup> District



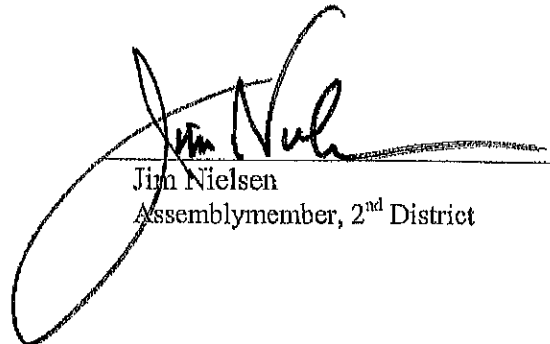
Bill Berryhill  
Assemblymember, 26<sup>th</sup> District



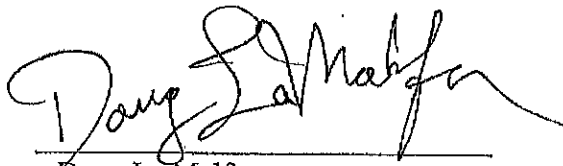
Kristin Olsen  
Assemblymember, 25<sup>th</sup> District



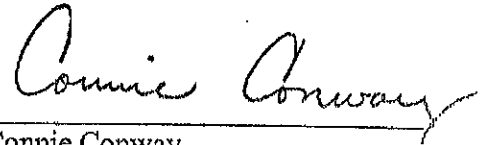
Brian Nestande  
Assemblymember, 64<sup>th</sup> District



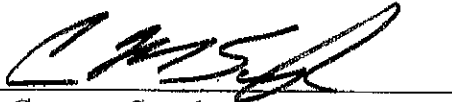
Jim Nielsen  
Assemblymember, 2<sup>nd</sup> District



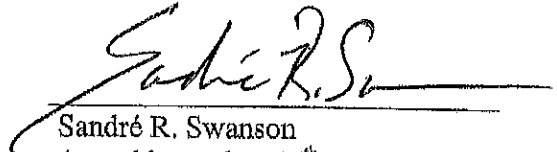
Doug La Malfa  
Senator, 4<sup>th</sup> District



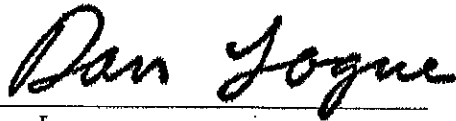
Connie Conway  
Assemblymember, 34<sup>th</sup> District



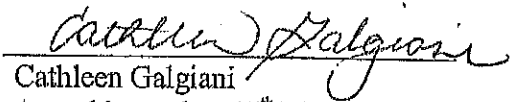
Cameron Smyth  
Assemblymember, 38<sup>th</sup> District



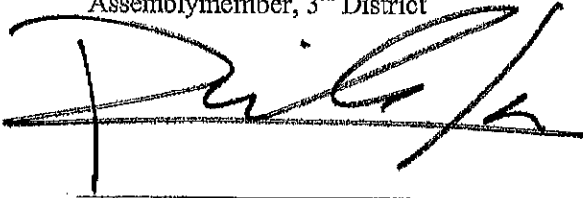
Sandré R. Swanson  
Assemblymember, 16<sup>th</sup> District



Dan Logue  
Assemblymember, 3<sup>rd</sup> District



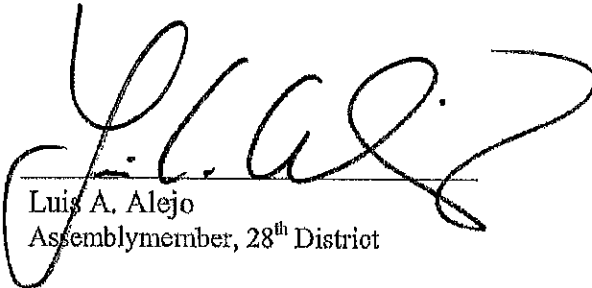
Cathleen Galgiani  
Assemblymember, 17<sup>th</sup> District



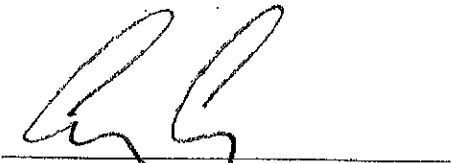
Ricardo Lara  
Assemblymember, 50<sup>th</sup> District



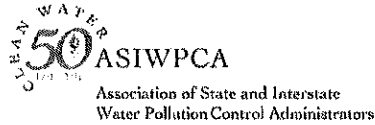
Mike Davis  
Assemblymember, 48<sup>th</sup> District



Luis A. Alejo  
Assemblymember, 28<sup>th</sup> District



Anthony Cannella  
Senator, 12<sup>th</sup> District



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April 19, 2011

**Honorable Barbara Boxer**  
Chairwoman  
Senate Environment & Public Works

**Honorable James Inhofe**  
Ranking Member  
Senate Environment & Public Works

**Honorable Debbie Stabenow**  
Chairwoman  
Senate Agriculture, Nutrition, & Forestry

**Honorable Pat Roberts**  
Ranking Member  
Senate Agriculture, Nutrition, & Forestry

**RE: Dual Regulation of Pesticide Applications Under FIFRA & CWA**

The undersigned organizations respectfully urge the Senate to join the House of Representatives and take legislative action to avoid duplicative environmental permitting requirements for applications of pesticides for public health and agricultural purposes. As a result of a series of court decisions, such applications are now governed – contrary to Congress’ intent – by both the *Clean Water Act (CWA)* and the *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*.<sup>1</sup> The end result is that unless Congress acts, by October 31 of this year, 365,000 new sources – many small businesses and state public health entities – will need to secure a CWA National Pollutant Discharge Elimination System (NPDES) permits for on-label FIFRA compliant applications. We represent state agencies with significant environmental and public health responsibilities, and are acutely aware of the importance of strong environmental regulation. For the reasons set forth in this letter, however, we believe that the pesticide permitting at issue here should be governed by FIFRA and state programs, and not duplicatively by the CWA.

For nearly three decades, the application of pesticides to water was regulated under FIFRA. A series of court decisions in the early 2000s, when read together, held that these pesticide applications *also* needed NPDES permits.<sup>2</sup> To reduce confusion following these decisions, EPA promulgated a final regulation in 2006 to exempt FIFRA compliant applications of aquatic pesticides from the CWA NPDES program and continue regulation under, and in accordance with, FIFRA authority. EPA’s final rule

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<sup>1</sup> Nat’l Cotton Council v. U.S. Envtl. Protect. Agency, 553 F.3d 927 (6th Cir. 2009)

<sup>2</sup> *Headwaters, Inc. v. Talent Irrigation Dist.*, 243 F.3d 526 (9th Cir. 2001); *League of Wilderness Defenders v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002); *Fairhurst v. Hagenor*, 422 F.3d 1146 (9th Cir. 2005)

was challenged in court, and in 2009 the Sixth Circuit vacated the pesticides exemption rule, finding EPA's longstanding approach to this matter not entitled to deference and its interpretation of the CWA unreasonable. Because the vacature immediately exposed pesticide applicators (including public health, transportation, forestry, and agriculture departments) to CWA liability, the Agency obtained a stay of the vacature while it developed a CWA general permit for such applications. The stay, originally through April 9, 2011, was recently extended through October 31, 2011 so that EPA can complete its work.

On April 1, EPA released a nearly complete pesticide general permit under the CWA. States have also been developing their own permits, using the EPA draft as an example in many cases. EPA estimates approximately 365,000 new sources must comply with these new NPDES permits, representing a 60 percent increase in the size of the NPDES program over its current size. State water quality agencies not only develop NPDES permits, but also ensure compliance via inspections, monitoring, data collection, reporting, compliance assistance, outreach, training, and more. As state budgets are already under significant strain, states will be forced to divert funds from other important water quality responsibilities in order to pay for additional employees and other expenses associated with this new unfunded mandate.

Existing requirements under FIFRA mandate that pesticides undergo a rigorous examination of potential environmental impacts and health exposure assessments prior to receiving approval for use. Restrictions for use are clearly articulated on the label. Because this process specifically examines a product's potential impact on water, and existing state and federal laws already provide for enforcement against pesticide misuse, most states view the additional permitting requirements under the CWA as duplicative.<sup>3</sup> We ultimately believe that flexibility and underlying authority exists within FIFRA to address water quality concerns. Likewise, use and application controls already exist at the state level, with authorities found in many state water quality and state pesticide programs.

We are concerned that the increased permitting burden will divert scarce funds away from vital public health and vector control activities. For some mosquito control districts, permit compliance costs will be nearly quadruple current budgets. The importance of pest and vector control to public health cannot be overstated. If localities are impeded from controlling mosquitoes, for example, increased West Nile Virus and equine encephalitis-related deaths could result.

We recognize that pesticides are present in the nation's waters and that water quality impairments due to these pesticides do exist. Proponents of this duplicative program

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<sup>3</sup> A select few states view CWA authority over aquatic pesticide applications appropriate and complementary to FIFRA.

assert that through the CWA NPDES program, applicators will be required to evaluate the pesticides they use (Pesticide Discharge Management Plan), reduce volumes, and thus water quality will be directly improved. We note, however, that many pesticide impairments are the result of historical, not contemporary, pesticide use. An NPDES program for pesticide application will not resolve legacy contamination of our nation's waters from persistent banned pesticides. Likewise, maintaining or restoring the environmental integrity of a watershed is a complex activity, which may in fact require the use of pesticides to eliminate invasive species, manage predator/prey relationships, maintain stream bank vegetation and buffer zones, reduce aquatic weeds, and protect forests and tree stands. Finally, while Integrated Pest Management (IPM) is an effective and environmentally sound approach to pest management, states can use broader, more direct authorities beyond the NPDES permit to encourage or require IPM where appropriate.

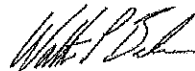
There are many important public health uses of pesticides. Entities affected by the new PGP will include counties, municipalities, school districts, public utilities, parks, forestry, and farmers. Some states estimate it will cost each small business at least \$15,000 per year to meet the reporting, recordkeeping, and other requirements of the new CWA permit. While EPA has delineated size thresholds and application types in or near water that are covered by the new permit, nothing in the CWA or the permit protects many other FIFRA compliant pesticide applications from CWA citizen suits. This creates an uncertain liability and financial exposure for users applying pesticides to golf courses and public utility rights of way, as well as private homes and businesses. Significant penalties are associated with CWA violations, including for paperwork violations. Public health and other state and local governmental agencies, as well as the private sector, will be vulnerable to these CWA penalties, fines, citizen suits, and defense costs without Senate action.

Again, we urge the Senate to join the House of Representatives, which passed bipartisan legislation on this matter last month, to ensure that duplicative permitting is not required under the CWA and FIFRA, as erroneously directed by the *National Cotton Council* court decision.

Sincerely yours,



Chuck Andrews  
President of AAPCO  
Director, Pesticide Programs Division  
CA Department of Pesticide Regulation



Walter L. Baker  
President of ASIWP/CA  
Director, Division of Water Quality  
UT Department of  
Environmental Quality

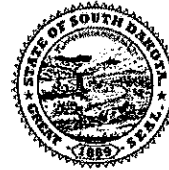


Leonard Blackham  
President of NASDA  
Commissioner  
UT Department of  
Agriculture and Food



Jeff Jahnke  
President of NASF  
State Forester  
CO State Forest Service





June 27, 2011

The Honorable Harry Reid  
Senate Majority Leader  
S-221  
Washington, DC 20510

The Honorable Mitch McConnell  
Senate Minority Leader  
S-230  
Washington, DC 20510

**John Hickenlooper**  
Governor  
State of Colorado

**C.L. "Butch" Otter**  
Governor  
State of Idaho

**Brian Schweitzer**  
Governor  
State of Montana

**John Kitzhaber**  
Governor  
State of Oregon

**Dennis Daugaard**  
Governor  
State of South Dakota

**Matt Mead**  
Governor  
State of Wyoming

Dear Senators Reid and McConnell:

The undersigned respectfully request that the Senate swiftly pass legislation to clarify and strengthen the primary role of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in regulating agriculture and public health related pesticide applications to waters of the U.S. FIFRA established a comprehensive regulatory system that provides pesticide-related environmental and public health protection. Accordingly, there is no need for pesticide registration and use to be regulated under any other federal statute.

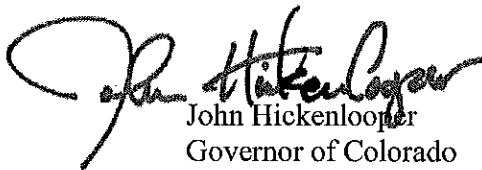
Following the Sixth Circuit's decision in *National Cotton Council v. EPA*, the U.S. Environmental Protection Agency (EPA) and state regulatory agencies must issue National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act (CWA) for pesticide applications that will be applied directly to or over waters of the U.S. However, these new requirements are duplicative of existing requirements under FIFRA which mandate that pesticides undergo an examination of environmental impacts, water quality impacts, and health exposure assessments prior to receiving approval for use. Additional permitting requirements under the CWA simply attempt to achieve the current results through different means. This duplicative regulation will entail significant costs for state permitting agencies and public health authorities, and will not provide appreciable environmental benefits.

Most state agencies are responsible for permitting, implementation, and enforcement activities under both the CWA and FIFRA. EPA has estimated that regulating pesticide applications under the Clean Water Act would affect approximately 365,000 applicators nationwide that perform 5.6 million applications annually. This would represent a significant increase in the size of the NPDES program and would place a significant burden on state resources. At a time of steep cuts to important state services, it is impossible to justify expending resources on a permitting program that is duplicative of other federal and state statutes.

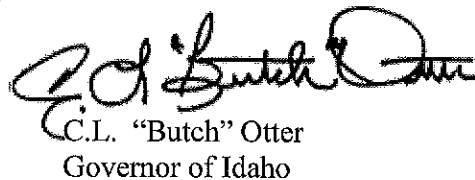
We are concerned that the new permitting requirements imposed on state agencies will have negative public health, environmental, and economic consequences. Each of our states has unique pest problems – including mosquitoes, invasive weeds, and vegetation that restricts water ways and reduces water flow – that require applications of pesticides to control. For states, localities, and other public agencies, the compliance costs associated with this permit will significantly reduce the availability of funds for actual pest control activities.

Again, we ask the Senate to address the confusion created by the *National Cotton Council* decision and take action quickly to avoid duplicative new permitting requirements for pesticide applications under the CWA in addition to existing regulation under FIFRA.

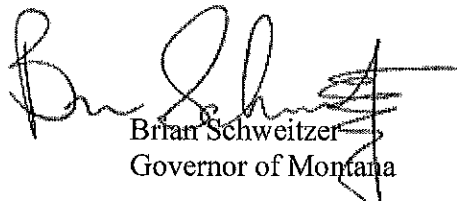
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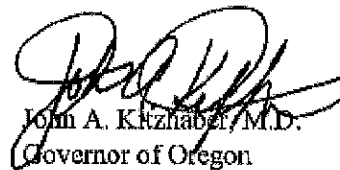
John Hickenlooper  
Governor of Colorado



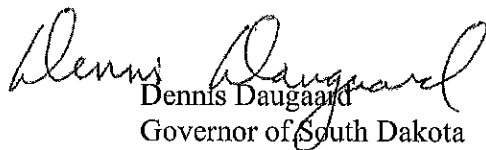
C.L. "Butch" Otter  
Governor of Idaho



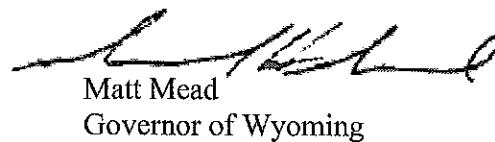
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