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16 Attorneys for Plaintiffs

17 **THE UNITED STATES DISTRICT COURT FOR THE**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

20 **GEERTSON FARMS INC.**, an Oregon )  
21 **corp.; TRASK FAMILY SEEDS.**, a South )  
22 **Dakota business, CENTER FOR FOOD** )  
23 **SAFETY**, a Washington DC nonprofit corp.; )  
24 **BEYOND PESTICIDES**, a Washington DC )  
25 **nonprofit corp.; CORNUCOPIA** )  
26 **INSTITUTE**, a Wisconsin nonprofit corp.; )  
27 **DAKOTA RESOURCE COUNCIL**, a North )  
28 **Dakota nonprofit corp.; NATIONAL** )  
**FAMILY FARM COALITION**, a Michigan )  
**nonprofit corp.; SIERRA CLUB**, a California )  
**nonprofit corp.; WESTERN** )  
**ORGANIZATION OF RESOURCE** )  
**COUNCILS**, a Montana nonprofit corp.;

Plaintiffs,

vs.

MIKE JOHANNNS, in his official capacity as )

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

Case No.

1 Secretary of the United States Department of )  
2 Agriculture; **RON DEHAVEN**, in his official )  
3 capacity as Administrator of the Animal Plant )  
4 Health and Inspection Service, United States )  
5 Department of Agriculture; **STEVE )  
6 JOHNSON**, in his official capacity as )  
7 Administrator of the United States )  
8 Environmental Protection Agency; )

Defendants.

1 **INTRODUCTION**

2 1. The United States Department of Agriculture (“USDA”) improperly authorized  
3 the commercialization and widespread dissemination of genetically engineered alfalfa. The  
4 alfalfa is engineered to be tolerant to Roundup, an herbicide manufactured by Monsanto.  
5

6 2. USDA approved a petition submitted by Monsanto and Forage Genetics  
7 International for a Determination of Non-regulated Status for Roundup Ready (glyphosate  
8 tolerant) Alfalfa, APHIS No. 04-110-01p, on June 25, 2005 (“Deregulation Determination”).  
9 The agency’s Deregulation Determination represented a significant step in the overall growth of  
10 the commercial use of crops genetically engineered to be herbicide tolerant. In addition, alfalfa  
11 is the first genetically engineered perennial crop to be commercialized. However, the facts in the  
12 record show that the Deregulation Determination was arbitrary and capricious.  
13

14 3. Moreover, USDA failed to adequately analyze the public health, environmental,  
15 and related economic consequences of its Deregulation Determination. The potential unintended  
16 adverse agronomic, environmental, and related economic effects of the use of Roundup Ready  
17 alfalfa are imminent and significant.  
18

19 4. In addition, the United States Environmental Protection Agency made related  
20 regulatory decisions in which it failed to conduct the requisite environmental review.  
21

22 5. This action seeks rescission of the Deregulation Determination and the  
23 completion of proper environmental review. This environmental review would include  
24 preparation of an Environmental Impact Statement and defendants’ compliance with the  
25 consultation requirements of the Endangered Species Act.  
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1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal  
3 question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2201-02 (declaratory  
4 relief), 5 U.S.C. § 702 (Administrative Procedure Act), and 16 U.S.C. § 1540(c) & (g)  
5 (Endangered Species Act).  
6

7 7. An actual controversy exists between the parties within the meaning of 28 U.S.C.  
8 § 2201 (declaratory judgments).  
9

10 8. To the extent required by the Endangered Species Act (“ESA”), 16 U.S.C. §  
11 1540(g)(2)(A), Plaintiffs Center for Food Safety, Beyond Pesticides, and Sierra Club provided  
12 sixty days notice of their intent to sue by letter delivered to Defendants on November 18, 2005.  
13 Defendants have not remedied the violations set forth in the 60-day notice.  
14

15 9. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(e) because one or  
16 more plaintiffs reside in this district.  
17

18 **INTRADISTRICT ASSIGNMENT**

19 10. Pursuant to Local Rule 3-2(c) and (d), assignment of this action is appropriate in  
20 the San Francisco or Oakland Divisions because one or more of the plaintiffs reside in San  
21 Francisco.  
22

23 **PARTIES**

24 11. Plaintiff Geertson Farms Inc. brings this action on behalf of itself. Geertson  
25 Farms is being, and will be, adversely affected by USDA’s actions complained of herein.  
26 Geertson Farms started as a family owned seed farm located near Adrian, Oregon and has  
27 produced alfalfa seed since 1942. Phillip Geertson still farms the original 80 acres that was  
28 homesteaded by his family in 1939. Geertson Farms is an Oregon Corporation.

1           12.     Geertson Farms sells ten varieties of alfalfa seed. Geertson Farms sells its seed  
2 on the domestic market and exports its seed abroad. To ensure quality, Geertson Farms cleans  
3 its seeds in its own plant. Geertson Farms seed varieties are university tested and have proven  
4 yield records. By growing, processing, and selling its own seed, Geertson Farms can offer top of  
5 the line seed for a good price. USDA's Deregulation Determination may result in the inadvertent  
6 contamination of Geertson Farms' alfalfa seed varieties causing environmental, economic, and  
7 aesthetic injury to Geertson Farms. Contamination of Geertson Farms' seed with Roundup  
8 Ready seed and/or the genetic trait injected into the Roundup Ready seed will affect its ability to  
9 export its seed and will affect its domestic marketing. Conventional farmers and organic farmers  
10 who want to exclude genetically engineered organisms from their production systems may  
11 demand some type of testing to certify the purity of the seed, which will raise Geertson Farms'  
12 costs. USDA's Deregulation Determination will fundamentally change the nature of the alfalfa  
13 seed and cause economic and aesthetic injury to Mr. Geertson. Moreover, the inevitable  
14 development of weed resistance to glyphosate will damage Geertson Farms' ability to control  
15 weeds and feral alfalfa through the use of glyphosate.  
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19           13.     Plaintiff Trask Family Seeds brings this action on behalf of itself. Trask Family  
20 Seeds is being, and will be, adversely affected by USDA's actions complained of herein. Trask  
21 Family Seeds has been ranching on the edge of the Black Hills of South Dakota since the Gold  
22 Rush days and has been a family business for four generations. Trask Family Seeds harvests  
23 alfalfa seed and hay from old, public varieties, commonly known as South Dakota Commons  
24 seed. Trask Family Seeds harvests about 15,000 acres of its own property and has agreements to  
25 custom harvest alfalfa seed from other ranches in the area.  
26  
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1           14.     Trask Family Seeds sells a whole, raw, pure alfalfa seed nationwide. Trask  
2 Family Seeds’ goal is to provide high quality seed at a reasonable cost. The cross contamination  
3 of the alfalfa seed that will inevitably occur from the introduction of genetically engineered  
4 alfalfa will have a detrimental effect on Trask Family Seeds ability to market and sell its alfalfa  
5 seed. Conventional farmers and organic farmers who want to exclude genetically engineered  
6 organisms from their production systems may demand testing to certify the purity of the seed  
7 which will raise Trask Family Seeds’ costs. USDA’s Deregulation Determination will result in  
8 the contamination of the South Dakota Commons alfalfa seed causing environmental, economic,  
9 and aesthetic injury to Trask Family Seeds. Contamination of the seeds will affect Trask Family  
10 Seeds’ ability to market its product as whole, raw, pure alfalfa seed. Moreover, the inevitable  
11 development of weed resistance to glyphosate will damage Trask Family Seeds’ ability to  
12 effectively use glyphosate.  
13

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16           15.     Plaintiff Center for Food Safety (“CFS”) brings this action on behalf of itself and  
17 its members. CFS and its members are being, and will be, adversely affected by defendants’  
18 actions complained of herein. CFS is a Washington, DC, nonprofit corporation that has offices  
19 in San Francisco, CA and Washington, DC.  
20

21           16.     Since the organization’s founding in 1997, CFS has sought to address the impacts  
22 of industrial farming and food production systems on human health, animal welfare, and the  
23 environment. CFS is a national non-profit membership organization with members in almost  
24 every state across the country, including members in states and locations where alfalfa is being  
25 grown.  
26

27           17.     CFS seeks to protect human health and the environment by ensuring that  
28 genetically engineered products are thoroughly safety-tested prior to any marketing; that such

1 products are tested in a manner that minimizes any risk of contaminating food supplies or the  
2 environment; and that foods created through genetic engineering, if on the market, are  
3 appropriately labeled. CFS also seeks to provide consumers with a means of identifying  
4 genetically engineered foods on the market and to encourage full public participation in defining  
5 the issues presented by genetically engineered crops. To this end, CFS sends out action alerts to  
6 its True Food Network, a 40,000 member network; these action alerts generate letters to  
7 governmental officials on issues related to genetic engineering and other issues affecting a  
8 sustainable food system.  
9  
10

11 18. To achieve its goals, CFS disseminates to government agencies, members of  
12 Congress, and the general public a wide array of educational and informational materials  
13 addressing the introduction of genetically engineered crops into the environment and food  
14 supply. These materials include, but are not limited to, reprints of news articles, policy reports,  
15 legal briefs, press releases, action alerts, and fact sheets. Collectively, the dissemination of this  
16 material has made CFS an information clearinghouse for public involvement and governmental  
17 oversight of the use of genetic engineering in our nation's food supply.  
18

19 19. The interests of CFS and its members are being, and will be, adversely affected by  
20 defendants' actions complained of herein. Defendants' actions ensure that CFS members are, and  
21 will be, aesthetically, economically, and physically injured by the spread of genetically  
22 engineered alfalfa. In particular, CFS' members grow alfalfa, use it for feed for their livestock,  
23 and sell non-genetically engineered products. CFS' members also regularly eat organic foods  
24 and desire foods that are free of genetically engineered materials. The proliferation of  
25 genetically engineered alfalfa will reduce the supply of feed and food that is not contaminated  
26 with genetically engineered material. Defendants' actions in allowing the introduction of  
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1 genetically engineered alfalfa into the environment will imminently make it more difficult for  
2 CFS' members to produce, sell, and eat meat, dairy, and honey that are not contaminated by  
3 genetically engineered materials.  
4

5 20. CFS and its members are also concerned about the proliferation of genetically  
6 engineered crops without adequate environmental analysis and with inadequate labeling. The  
7 Deregulation Determination adversely affects CFS and its members because the action will allow  
8 genetically engineered alfalfa to be placed in the stream of commerce without labeling, adequate  
9 environmental review, or any other limitations.  
10

11 21. CFS members regularly visit parks, natural areas, and other habitats near where  
12 genetically engineered alfalfa will be planted. The release, introduction, and spread of  
13 genetically engineered alfalfa injures CFS' members by interfering, *inter alia*, with their aesthetic  
14 enjoyment of native and endangered species and their use and enjoyment of parks, natural areas,  
15 and other habitats near alfalfa farms and feral alfalfa. Similarly, CFS members' recreational and  
16 physical enjoyment of natural and recreational areas is injured as the introduction of genetically  
17 engineered, glyphosate tolerant alfalfa makes it more difficult for stewards of such natural and  
18 recreational areas to remove weeds that develop resistance to glyphosate. Such removal  
19 activities will require more environmentally damaging techniques such as excessive use and  
20 misuse of glyphosate and other herbicides. As a result CFS' members are at greater risk of  
21 suffering health effects of increased herbicide use. Such imminent impacts also cause aesthetic  
22 injury to their property.  
23  
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25 22. The conservational, environmental, and economic interests, as well as the health,  
26 wellbeing and enjoyment of CFS and its members have been, and continue to be threatened, by  
27  
28



1 Defendants' actions. Defendants' actions will affect CFS and its members' conservation,  
2 environmental, and aesthetic interests because it may affect threatened or endangered species.

3  
4 23. Plaintiff Beyond Pesticides brings this action on behalf of itself and on behalf of  
5 its members. Beyond Pesticides and its members are being, and will be, adversely affected by  
6 defendants' actions complained of herein. Beyond Pesticides is a Washington, DC, nonprofit  
7 corporation based in Washington, DC.

8  
9 24. Beyond Pesticides promotes safe air, water, land, and food and works to protect  
10 public health and the environment by encouraging a transition away from the use of toxic  
11 pesticides.

12  
13 25. With Beyond Pesticides' resources made available to the public on a national  
14 scale, Beyond Pesticides contributes to a significant reduction in unnecessary pesticide use, thus  
15 improving protection of public health and the environment. The risks to public health and the  
16 environment from pesticides are large.

17  
18 26. Beyond Pesticides and its members aim to reduce the proliferation genetic  
19 engineered crops designed to be pesticide tolerant, because herbicide tolerant crops will continue  
20 the pesticide treadmill that threatens the health of Beyond Pesticides' members. About 85% of  
21 all genetically engineered organisms are altered to be herbicide tolerant.

22  
23 27. Beyond Pesticides' goal is to push for labeling as a means of identifying products  
24 that contain genetically engineered ingredients, educate on the public health and environmental  
25 consequences of this technology, and generate support for sound ecological-based management  
26 systems. The Deregulation Determination adversely affects Beyond Pesticides and its members  
27 because the action will allow genetically engineered alfalfa to be placed in the stream of  
28

1 commerce without labeling, adequate environmental review, or any other limitations; it stealthily  
2 exposes Beyond Pesticides' members to increased pesticide residues.

3  
4 28. Beyond Pesticides' members regularly visit parks, natural areas, and other  
5 habitats near where genetically engineered alfalfa will be planted. The release, introduction, and  
6 spread of genetically engineered alfalfa injures Beyond Pesticides' members when visiting  
7 recreational areas by interfering, *inter alia*, with their aesthetic enjoyment of native and  
8 endangered species and their use and enjoyment of parks, natural areas, and other habitats near  
9 alfalfa farms and wild alfalfa. Similarly, Beyond Pesticides members' recreational and physical  
10 enjoyment of natural and recreational areas is injured as the introduction of genetically  
11 engineered glyphosate tolerant alfalfa makes it more difficult for stewards of such natural and  
12 recreational areas to remove weeds that develop resistance to glyphosate. Such removal  
13 activities will require more environmentally damaging techniques, such as excessive use and  
14 misuse of glyphosate and other herbicides. As a result Beyond Pesticides' members are at  
15 greater risk of suffering health effects of increased herbicide use. Such imminent impacts pose  
16 increased health risks to Beyond Pesticides' members from a greater risk of exposure to  
17 excessive use and misuse of glyphosate and other herbicides, and cause aesthetic injury to their  
18 property. As a result, Beyond Pesticides' members are at greater risk of suffering health effects  
19 of increased herbicide use. Defendants' actions will affect Beyond Pesticides and its members'  
20 conservation, environmental, and aesthetic interests because it may affect threatened or  
21 endangered species.

22  
23 29. Plaintiff The Cornucopia Institute brings this action on behalf of itself and on  
24 behalf of its members. The Cornucopia Institute and its members are being, and will be,  
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1 adversely affected by USDA's actions complained of herein. The Cornucopia Institute is a  
2 Wisconsin nonprofit corporation based in Cornucopia, Wisconsin.

3  
4 30. Through research, advocacy, and economic development, Cornucopia's goal is to  
5 empower farmers both politically and through marketplace initiatives. Among the interests of  
6 The Cornucopia Institute is protecting the credibility of organic farming methods. The  
7 Cornucopia Institute members include alfalfa farmers who grow and use non-genetically  
8 engineered alfalfa. The Cornucopia Institute's members include farmers who own certified  
9 organic farms and who desire to maintain their organic farms free of genetically engineered  
10 crops.  
11

12 31. Since alfalfa is used as a primary feed for cows, USDA's actions allowing the  
13 introduction of genetically engineered glyphosate tolerant alfalfa into the environment may result  
14 in the contamination of organic dairies and meats with genetically engineered feeds. Such  
15 imminent impacts will adversely affect the consumers' perception of organic foods, will  
16 adversely affect organic farmers' property, and may result in the rejection of organic farmers'  
17 products as organic. In addition, the Cornucopia Institute and its members' interests are  
18 adversely affected because genetically engineered crops promote large scale agribusiness at the  
19 expense of family scale farming. The introduction of genetically engineered crops will increase  
20 the cost of farming because farmers who want to sell genetically engineered free crops will be  
21 required to prove that their products are genetically engineered free through testing and/or to  
22 plant buffers or taken other measures to prevent such contamination. However, buffers and other  
23 protective measure may not prevent the genetic contamination.  
24  
25

26 32. Plaintiff Dakota Resource Council ("DRC") brings this action on behalf of itself  
27 and on behalf of its members. DRC and its members are being, and will be, adversely affected  
28

1 by USDA's actions complained of herein. DRC is a North Dakota nonprofit corporation that is  
2 headquartered in Dickinson and that has offices in Bismarck and Fargo, North Dakota.

3 33. DRC was formed in 1978 to protect North Dakota's land, air, water, rural  
4 communities, and agricultural economy. DRC works for preservation of family farms,  
5 enforcement of corporate farming laws, soil and water conservation, regulation of coal mining  
6 and oil and gas development, protection of groundwater and clean air, renewable energy, and  
7 sound management of solid and toxic wastes. It is a grassroots organization whose mission is to  
8 form enduring, democratic local groups that empower people to influence decision-making  
9 processes that affect their lives.  
10  
11

12 34. Among the interests of DRC are consumers' right to know whether their food is  
13 genetically engineered; placing liability on biotech corporations for damages caused by their  
14 products; and disclosure of sponsorship of research on genetically engineered products. DRC's  
15 members include alfalfa farmers who grow and use non-genetically engineered alfalfa. DRC's  
16 members include farmers who desire to maintain their farms free of genetically engineered crops.  
17 DRC's members also regularly eat organic foods and desire foods that are free of genetically  
18 engineered materials. The proliferation of genetically engineered alfalfa will reduce the supply  
19 of feed and food that is not contaminated with genetically engineered material.  
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22 35. Since alfalfa is used as a primary feed for cows, USDA's actions allowing the  
23 introduction of genetically engineered, glyphosate tolerant alfalfa into the environment may  
24 result in the contamination of milk and meats with genetically engineered feeds. Such imminent  
25 impacts will adversely affect the consumers' perception of dairy and meat, will adversely affect  
26 farmers' property that is maintained as genetically engineered free, and may result in the  
27 rejection of farmers' products because they are no longer free from genetic engineering. The  
28

1 costs of maintaining a genetically engineered free market will increase because testing will be  
2 needed to prove that there has been no contamination of the feed and because buffers or other  
3 measures may also need to be taken to prevent such contamination. Still, buffers and other  
4 protective measure may not prevent the genetic contamination.  
5

6 36. The Deregulation Determination adversely affects DRC and its members because  
7 the action will allow genetically engineered alfalfa to be placed in the stream of commerce  
8 without labeling, adequate environmental review, or any other limitations. In addition, DRC and  
9 its members' interests are adversely affected because genetically engineered crops promote large  
10 scale agribusiness at the expense of family scale farming.  
11

12 37. Plaintiff National Family Farm Coalition ("NFFC") brings this action on behalf of  
13 itself and its member organizations. Founded in 1986, NFFC is a coalition representing family  
14 farm and rural groups working to secure a sustainable, economically just, healthy, safe, and  
15 secure food and farm system. NFC is a Michigan nonprofit corporation that is headquartered in  
16 Washington, DC.  
17

18 38. NFFC was among the first farm groups in the nation to call into question the  
19 agronomic, economic, environmental and public health impacts of genetically engineered crops,  
20 and, together with member groups, conducted a Summit on Genetically Engineered Crops in  
21 1998 that brought together farmers, environmental groups, consumer groups, and scientists to  
22 discuss the impacts of agricultural biotechnology on farmers and rural economies.  
23

24 39. NFFC and its member organizations coordinated and sponsored the Farmer to  
25 Farmer Campaign on Genetic Engineering (Farmer to Farmer) formed in 1999 to provide a  
26 national voice for farmers on agricultural biotechnology issues. Farmer to Farmer is comprised  
27 of 34 farm and rural groups who have endorsed the Farmer Declaration on Genetic Engineering  
28

1 which demands that no new genetically engineered crops be deregulated and commercialized  
2 until a thorough, objective, independent and publicly transparent assessment of the impacts is  
3 conducted on said genetically engineered crop and determined to pose no risk of harm to  
4 farmers, farm and rural economies, the environmental or the health and safety of our food  
5 system. Farmer to Farmer has an office in Stoughton, Wisconsin.

7 40. Since 1999, NFFC and Farmer to Farmer have jointly engaged in numerous  
8 national and international campaigns to educate farmers on the risks of genetically engineered  
9 crops, to train farmer leaders as spokespersons on issues involving genetic engineering and its  
10 impact on farmers and rural communities, to assist and support farm organizations in grassroots  
11 efforts to educate the public on said risks, and to raise the visibility and awareness of these  
12 problems among the media and policy-makers.

14 41. NFFC, Farmer to Farmer, and member organizations regularly provide comment  
15 to the USDA on Petitions for Deregulated Status on new genetically engineered crops and did so  
16 in the docket which led to the deregulation of genetically engineered alfalfa, which is the basis  
17 for this action.

19 42. Among the farmer members of NFFC and its member organizations are  
20 conventional and organic dairy and beef producers, grassfed beef and dairy producers,  
21 beekeepers and horsebreeders, all of whom will be adversely affected by the USDA's actions.  
22 The Deregulation Determination adversely affects the farmer members of NFFC and its member  
23 organizations because the action will allow genetically engineered alfalfa to be placed in the  
24 stream of commerce without labeling, adequate environmental review, or any other limitations.  
25 In addition, farmer members of NFFC and its member organizations' interests are adversely  
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1 affected because genetically engineered crops promote large scale agribusiness at the expense of  
2 family scale farming.

3           43. Plaintiff Sierra Club brings this action on behalf of itself and its more than  
4 750,000 members. Sierra Club and its members are being, and will be, adversely affected by  
5 defendants' actions complained of herein. The Sierra Club is a national nonprofit organization  
6 of approximately 750,000 members dedicated to exploring, enjoying, and protecting the wild  
7 places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and  
8 resources; to educating and enlisting humanity to protect and restore the quality of the natural  
9 and human environment; and to using all lawful means to carry out these objectives. Sierra Club  
10 is a California nonprofit corporation that is headquartered in San Francisco, CA.

11           44. The Sierra Club's concerns encompass endangered species, habitat protection,  
12 pollution, genetic engineering, and industrial agriculture. The Club's particular interest in this  
13 case and the issues which the case concerns stem from the deregulation of genetically engineered  
14 alfalfa. The Sierra Club's Genetic Engineering Committee educates the public and advocates for  
15 regulatory reform to protect the natural environment and human health from the threats posed by  
16 the release of novel genetically engineered organisms. Roundup Ready alfalfa falls within the  
17 scope of diverse concerns that the Sierra Club's Genetic Engineering Committee has been raising  
18 about these radically new genetically engineered crops.

19           45. Defendants' actions ensure that Sierra Club members are, and will be,  
20 aesthetically and physically injured by the spread of genetically engineered alfalfa. Sierra Club  
21 has members in every state across the country, including members in states and locations where  
22 alfalfa is being grown. Sierra Club members include farmers, ranchers, and rural residents who  
23 live in agricultural locations where glyphosate tolerant alfalfa will be grown and who will be  
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1 affected by the alfalfa crop. Members who grow alfalfa, keep honey bees, or feed their animals  
2 alfalfa may suffer from a reduced market if contaminated with genetically engineered alfalfa.

3  
4 46. Sierra Club and its members have an interest in the protection of endangered  
5 species and their habitat. Sierra Club has urban members who hike and camp out in wild, natural  
6 areas who are concerned about genetically engineered crops such as glyphosate tolerant alfalfa.  
7 The spread of genetically engineered alfalfa into the environment will offend their enjoyment of  
8 natural places. The pesticide residue levels permitted by EPA and increased Roundup use  
9 anticipated with Roundup Ready alfalfa may harm members' interests in endangered species and  
10 other wildlife that live near or feed upon alfalfa fields.  
11

12 47. The Deregulation Determination adversely affects Sierra Club and its members  
13 because the action will allow genetically engineered alfalfa to be placed in the stream of  
14 commerce without labeling, adequate environmental review, or any other limitations.  
15

16 48. Plaintiff Western Organization of Resources Councils ("WORC") brings this  
17 action on behalf of itself and on behalf of its members. WORC and its members are being, and  
18 will be, adversely affected by USDA's actions complained of herein. WORC is a regional  
19 network of seven grassroots community organizations that include 9,500 members and 50 local  
20 chapters. WORC's member organizations are: Dakota Rural Action, Dakota Resource Council,  
21 Idaho Rural Council, Northern Plains Resource Council, Oregon Rural Action, Powder River  
22 Basin Resource Council, and Western Colorado Congress. WORC is a Montana and North  
23 Dakota, nonprofit corporation that is based in Billings, Montana and that has field offices in  
24 offices in Montrose, Colorado, Lemmon, South Dakota, and Washington, DC.  
25

26 49. WORC's mission is to advance the vision of a democratic, sustainable, and just  
27 society through community action. WORC is committed to building sustainable environmental  
28



1 and economic communities that balance economic growth with the health of people and  
2 stewardship of their land, water, and air resources. WORC interests include safe food,  
3 responsible coalbed methane development, and a sound energy policy.  
4

5 50. The interests of WORC and its members are being, and will be, adversely affected  
6 by defendants' actions complained of herein. Defendants' actions ensure that WORC members  
7 are, and will be, aesthetically and physically injured by the spread of genetically engineered  
8 alfalfa. Among the interests of WORC are to ensure consumers' right to know by requiring the  
9 clear and accurate labeling at the retail level of all foods that contain, *inter alia*, genetically  
10 engineered ingredients. WORC and its members include alfalfa farmers who grow and use  
11 alfalfa free of genetic engineering and who desire to maintain their farms free of genetically  
12 engineered crops. WORC's members also regularly eat organic foods and desire foods that are  
13 free of genetically engineered materials. The proliferation of genetically engineered alfalfa will  
14 reduce the supply of feed and food that is not contaminated with genetically engineered material.  
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17 51. Since alfalfa is used as a primary feed for cows, USDA's actions allowing the  
18 introduction of genetically engineered glyphosate tolerant alfalfa into the environment may result  
19 in the contamination of milk and meats with genetically engineered feeds. Such imminent  
20 impacts will adversely affect the consumers' perception of dairy and meat, will adversely affect  
21 farmers' property that is maintained as genetically engineered free, and may result in the  
22 rejection of farmers' products because they are no longer free from genetic engineering. The  
23 costs of maintaining a genetically free market will increase, because testing will be needed to  
24 prove that there has been no contamination of the feed. In addition, WORC and its members'  
25 interests are adversely affected because genetically engineered crops promote large scale  
26 agribusiness at the expense of family scale farming.  
27  
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1           52.     WORC and its members are concerned about the proliferation of genetically  
2 engineered crops without adequate environmental analysis and with inadequate labeling of food  
3 that contains genetically engineered organisms. The Deregulation Determination adversely  
4 affects WORC and its members because the action will allow genetically engineered alfalfa to be  
5 placed in the stream of commerce without labeling, adequate environmental review, or any other  
6 limitations.  
7

8           53.     In addition, genetically engineered alfalfa may adversely affect the export of  
9 alfalfa thereby injuring WORC and its members.  
10

11           54.     Defendant Mike Johanns is the Secretary of the U.S. Department of Agriculture  
12 and is being sued in his official capacity.

13           55.     Defendant Ron Dehaven is the Administrator for the U.S. Department of  
14 Agriculture’s Animal and Plant Health Inspection Service (“APHIS”) and is being sued in his  
15 official capacity.  
16

17           56.     Defendants Johanns and Dehaven are collectively referred to as USDA.

18           57.     Defendant Steve Johnson is Administrator of the United States Environmental  
19 Protection Agency (“EPA”) and is being sued in his official capacity. Defendant Johnson is  
20 referred to as EPA.  
21

22           ***The Plant Protection Act***

23           58.     The Plant Protection Act (“PPA”), 7 U.S.C. § 7711(A), authorized USDA to issue  
24 regulations “to prevent the introduction of plant pests into the United States or the dissemination  
25 of plant pests within the United States.” Genetically engineered crops are regulated as potential  
26 plant pests pursuant to regulations promulgated under the PPA, 7 C.F.R. Part 340.  
27  
28

1           59.     Genetically engineered crops are considered potential plant pests until the USDA  
2 makes a determination that a specific genetic modification does not create a plant pest.

3                   ***The National Environmental Policy Act***

4           60.     “The National Environmental Policy Act is our basic national charter for  
5 protection of the environment.” 40 C.F.R. § 1500.1(a).

6           61.     The National Environmental Policy Act (“NEPA”) emphasizes the importance of  
7 comprehensive environmental analysis to ensure that federal agencies make informed decisions.  
8 It also ensures that the public is made aware of the environmental effects of agencies’ decisions.  
9 NEPA requires federal agencies to assess the environmental consequences of their actions before  
10 those actions are undertaken.  
11

12           62.     All "major Federal actions significantly affecting the quality of the human  
13 environment" require the preparation of a detailed Environmental Impact Statement (“EIS”). 42  
14 U.S.C. § 4332(2)(C). A threshold issue is whether a proposed project may “significantly affect”  
15 the environment.  
16

17           63.     An agency may prepare an Environmental Assessment (“EA”) to decide whether  
18 the environmental impact of a proposed action warrants the preparation of an EIS. 40 C.F.R. §  
19 1508.9. An EA must provide sufficient evidence and analysis to determine whether an EIS or a  
20 finding of no significant impact should be prepared. If an agency decides not to prepare an EIS,  
21 it must explain why a project's impacts are insignificant.  
22

23           64.     An EIS must be prepared if substantial questions are raised about whether a  
24 project may have a significant effect on the environment.  
25

26           65.     An impact that is both beneficial and adverse may create a significant effect “even  
27 if the Federal agency believes that on balance the effect will be beneficial.” 40 CFR §  
28

1 1508.27(b)(1).

2 66. An agency must evaluate "the degree to which the effects on the quality of the  
3 human environment are likely to be highly controversial." 40 CFR § 1508.27(b)(4).

4 67. A project may also have significant environmental impacts where its effects are  
5 "highly uncertain or involve unique or unknown risks." 40 C.F.R. § 1508.27(b)(5).

6 68. A significant impact "exists if it is reasonable to anticipate a cumulatively  
7 significant impact on the environment. Significance cannot be avoided by terming an action  
8 temporary or by breaking it down into small component parts." 40 CFR § 1508.27(b)(7).

9  
10  
11 ***The Endangered Species Act***

12 69. As recognized by the Supreme Court, the Endangered Species Act ("ESA") is  
13 comprehensive legislation for the preservation of endangered species.

14 70. When a species has been listed as threatened or endangered under the ESA,  
15 federal agencies have duties under the Act to assess activities and bring them into compliance  
16 with the Act.

17 71. The ESA requires every Federal agency to conserve species listed as endangered  
18 or threatened. 16 U.S.C. § 1536(a)(1).

19 72. Section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), requires that defendants  
20 "insure" that their actions are not likely to jeopardize the continued existence of any threatened  
21 or endangered species or result in the destruction or adverse modification of critical habitat.

22 73. In order to meet this obligation, defendants are required to consult with the U.S.  
23 Fish and Wildlife Service ("USFWS") with respect to their actions that may affect any listed  
24 species. The Act and its regulations set forth the process to be followed to ensure compliance  
25 with duties it prescribes.  
26  
27  
28

1 **STATEMENT OF FACTS**

2 ***Background on Alfalfa***

3 74. Dubbed “Queen of the Forages,” alfalfa is the fourth most widely grown crop in  
4 the United States behind corn, soybeans, and wheat; and it is grown in over 40 states. In 2004,  
5 the USDA estimated that 77.4 million tons was produced on 22.2 million acres, with an  
6 additional 88.5 million tons of alfalfa mixed hay produced on another 39.4 million acres.  
7

8 75. In 2004, 1,050,000 acres of alfalfa and alfalfa mixtures for hay were harvested in  
9 California, and another 7,350,000 tons of hay were produced in California. In California, hay  
10 and seed are often produced on the same acreage.  
11

12 76. U.S. alfalfa exports total nearly \$480 million per year with about 75% of exports  
13 going to Japan.  
14

15 77. Alfalfa is an important feed for all classes of agricultural animals in the United  
16 States and in many other countries. Alfalfa is considered the best available animal feed for  
17 ruminants and is critical to the dairy industry providing up to a third of crude protein, half of the  
18 calcium, and a quarter of the energy needed on a daily basis by a typical cow.  
19

20 78. Other livestock sectors that rely upon alfalfa include beef cattle, sheep, chickens,  
21 turkeys, and horses. Pelletized alfalfa is a common component of many pet foods for everything  
22 from iguanas and parakeets to hamsters and rabbits. Alfalfa also produces a large amount of  
23 nectar, up to 1900 pounds per acre, making it popular with beekeepers.  
24

25 79. About 7% of alfalfa seed in the U.S. is also eaten directly by humans in the form  
26 of sprouts.  
27

28 80. Alfalfa seed production is economically feasible only in geographic areas with a  
unique combination of soils, moisture, amount of daylight and yearly weather cycles that provide

1 low humidity during harvest time. As a consequence, in the United States, the bulk of alfalfa  
2 seed is grown in a few states and in small areas within those states.

3 81. California is the largest producer of alfalfa seed, followed by Idaho, Washington,  
4 Nevada, and Oregon. The approximate yield of alfalfa seed in the U.S. is 115 million pounds.  
5 California, Idaho, Oregon, Washington, and Nevada provide 85% of this production.  
6

7 82. Alfalfa is a perennial crop often grown for 3-5 years in a row. Alfalfa can be and  
8 is often grown without the application of pesticides. Feral and volunteer alfalfa is ubiquitous in  
9 the West.  
10

11 83. Only 17% of alfalfa planted in the U.S. is treated with herbicides.

12 84. Alfalfa is in a class of plants naturally pollinated by bees as they harvest pollen  
13 and by wind action. Honey bees, alkali bees, and leaf cutter bees are important pollinators for  
14 alfalfa producers. Alfalfa leafcutting bees are the major commercial pollinator of seed alfalfa in  
15 western North America.  
16

17 85. Unlike most alfalfa seed production states, California depends almost exclusively  
18 on honey bees for alfalfa pollination. Although leafcutters are more efficient pollinators, they are  
19 more susceptible to pesticides and high temperatures. Honey bees are more readily available,  
20 less expensive, and require less management than leafcutter bees.  
21

22 86. More than 130 species of birds visit alfalfa fields each year, including endangered  
23 species.  
24

#### 25 ***History of Roundup Ready Alfalfa***

26 87. Monsanto began development of Roundup Ready alfalfa in 1998 in collaboration  
27 with researchers at Montana State University. The plants at issue, Events J101 and J163, have  
28 been engineered with a gene that confers tolerance to glyphosate. Glyphosate is the active

1 ingredient in Roundup.

2 88. “Events J101 and J163 were engineered to be glyphosate tolerant by inserting a  
3 gene that codes for the enzyme 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS) into the  
4 alfalfa genome. The gene is from the common soil bacterium *Agrobacterium* sp. strain CP4 and  
5 was introduced into alfalfa via an *Agrobacterium*- mediated transformation protocol.” (USDA’s  
6 Environmental Assessment (“EA”) at 4).

7  
8 89. In 1999, Monsanto officially licensed its Roundup Ready technology for use on  
9 alfalfa to Forage Genetics International.

10  
11 90. The genetic engineering of alfalfa triggered the USDA’s regulation in 7 CFR part  
12 340 regarding plant pests. “Alfalfa events J101 and J163 [had] been considered regulated  
13 articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant  
14 pathogens.” 70 Fed. Reg. at 36918.

15  
16 91. In addition, the Food Drug and Cosmetic Act (“FDCA”) required EPA to set  
17 tolerance levels for glyphosate on alfalfa and alfalfa seed because alfalfa was engineered to be  
18 tolerant to glyphosate,

19 ***Procedural History***

20  
21 92. On April 17, 2002, EPA issued a notice in the Federal Register that Monsanto had  
22 petitioned EPA pursuant to the FDCA to establish tolerances for glyphosate residues related to  
23 alfalfa.

24  
25 93. On September 27, 2002, EPA established “tolerances for residues of glyphosate in  
26 or on animal feed, nongrass group; grass, forage, fodder and hay, group and adds potassium salt  
27 of glyphosate to the tolerance expression.” Glyphosate; Pesticide Tolerances, Final Rule, 67  
28 Fed. Reg. 60934 (Sept. 27, 2002).

1           94.     On April 16, 2004, APHIS received a petition from Monsanto Company and  
2 Forage Genetics International requesting a determination of nonregulated status for genetically  
3 engineered alfalfa designated as Events J101 and J163. “The Monsanto/FGI petition states that  
4 the subject alfalfa should not be regulated by APHIS because it does not present a plant pest  
5 risk.” 70 Fed. Reg. at 36918.

7           95.     On August 18, 2004, EPA issued a notice in the Federal Register that Monsanto  
8 had petitioned EPA pursuant to the FDCA to establish tolerances for residues of glyphosate for  
9 alfalfa seed. Monsanto also petitioned to eliminate the tolerances set for alfalfa, forage, and  
10 alfalfa hay because they were allegedly no longer needed. These tolerances were to apply to  
11 both conventional and genetically engineered alfalfa.

13           96.     On November 10, 2004, EPA denied Monsanto’s request to eliminate the  
14 tolerances for alfalfa forage and alfalfa hay.

16           97.     On November 24, 2004, USDA published a notice in the Federal Register  
17 announcing the Monsanto/Forage Genetic International’s petition to deregulate genetically  
18 engineered alfalfa and that the Environmental Assessment (“EA”) was available for public  
19 comment due by January 24, 2005. The public comment period was extended to February 17,  
20 2005.

22           98.     The EA defined the limited scope of USDA’s environmental analysis. The “EA  
23 has been prepared prior to issuing a determination of nonregulated status for J101 and J163  
24 alfalfa in order to specifically address the potential for impact to the human environment through  
25 unconfined cultivation and use of the regulated articles in agriculture the use in agriculture of  
26 Events J101 and J63.” (EA at 4).

28           99.     “It does not address the separate issue of the potential use of the herbicide



1 glyphosate in conjunction with these plants.” (EA at 4). The EA stated that pursuant to the  
2 Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) EPA had authority over the use  
3 of all pesticidal substances. *Id.*

4  
5 100. In addition, the EA stated that the U.S. Food and Drug Administration (“FDA”)  
6 “has authority over food and feed issues of all plants used as food and feed.” *Id.* at 4. However,  
7 the EA failed to explain that FDA only maintains a voluntary compliance system with respect to  
8 food and feed issues.

9  
10 101. The EA evaluated three alternatives: A) a no action decision that would maintain  
11 the genetically engineered plants as regulated articles; B) a determination that the genetically  
12 engineered plants are no longer regulated articles. “A basis for this determination would include  
13 a ‘Finding of No Significant Impact’” under [NEPA]” (EA at 6); C) a determination that J101  
14 and J163 Alfalfa Plants are No Longer Regulated Articles, in Part, which could result in approval  
15 of one of the two lines and/or it could include a geographic restriction. *Id.* at 5-6.

16  
17 102. On December 8, 2004, the FDA issued a Biotechnology Consultation Note to the  
18 File BNF No. 000084 regarding Glyphosate-tolerant (Roundup Ready) Alfalfa Event J101 and  
19 Event J163. This consultation note was issued as part of FDA’s voluntary consultation process  
20 which does not mandate any food safety testing. FDA only reviewed documents presented by  
21 Monsanto/Forage Genetics International. The consultation note concluded that: “Monsanto and  
22 Forage Genetics have concluded that their glyphosate-tolerant alfalfa event J101 and event J163,  
23 and the feeds and foods derived from them, are not materially different in safety, composition, or  
24 any other relevant parameter from alfalfa now grown, marketed and consumed. At this time,  
25 based on Monsanto’s and Forage Genetics’ description of its data and information, the Agency  
26 considers this consultation on alfalfa event J101 and event J163 to be complete.”  
27  
28

1 (Biotechnology Consultation Note to the File BNF No. 000084 at 5).

2 103. On February 16, 2005, EPA set a set a tolerance level of 0.5 ppm for alfalfa seed  
3 codified at 40 CFR § 180.364(a). Glyphosate; Pesticide Tolerances, Final Rule, 70 Fed. Reg.  
4 7861-7864 (Feb. 16, 2005).

5  
6 104. In May 2005, USDA issued an Environmental Assessment and Finding of No  
7 Significant Impact (“FONSI”).

8 105. In the FONSI, USDA asserted that EPA was responsible for analyzing any  
9 impacts resulting from the use of glyphosate on the new GE alfalfa crop because, “EPA has  
10 regulatory authority over pesticide use,” and because EPA set tolerances for glyphosate residue  
11 on alfalfa and on alfalfa seed. (FONSI, at 11). Therefore, USDA did not analyze the impacts  
12 related to glyphosate use.  
13

14 106. In the FONSI, USDA admitted that glyphosate tolerant alfalfa “may result in  
15 additional glyphosate resistant weeds.” (FONSI at 6). In fact, USDA states that “[w]eed species  
16 have developed resistance to every widely used herbicide,” and admitted that this is a “potential  
17 problem.” *Id.*  
18

19 107. In the FONSI, USDA generally responded to comments. USDA received 663  
20 comments on its action including extensive scientific comments submitted by the Center for  
21 Food Safety on January 24, 2005.  
22

23 108. Another commenter, “a scientist that has worked with alfalfa seed” for his entire  
24 career, urged USDA to not make the Deregulation Determination because too much uncertainty  
25 existed with respect to pollen control.  
26

27 109. On June 27, 2005, USDA concluded in its Deregulation Determination that alfalfa  
28 events J101 and J163 “would not present a risk of plant pest introduction or dissemination.” 70

1 Fed. Reg. at 36918. USDA made six findings, *inter alia*, that the Alfalfa events . . . “(5) will not  
2 harm threatened or endangered species or organisms that are beneficial to agriculture; and (6)  
3 should not reduce the ability to control pests and weeds in alfalfa or other crops.” 70 Fed. Reg.  
4 36918-19.  
5

6 110. “The effect of this determination is that Monsanto/FGI alfalfa events J101 and  
7 J163 are no longer considered regulated articles under APHIS regulations in 7 CFR part 340.  
8 Therefore, the requirements pertaining to regulated articles under those regulations no longer  
9 apply to the subject alfalfa or its progeny.” 70 Fed. Reg. at 36919.  
10

11 111. USDA’s Deregulation Determination authorized the commercial release into the  
12 environment of the first perennial genetically engineered crop to be used over vast acreage and in  
13 a myriad of climates and habitats throughout the United States.  
14

#### 15 ***Effects of the Deregulation Determination***

16 112. The use of glyphosate tolerant alfalfa will increase the use of glyphosate. Yet,  
17 USDA has neither analyzed how glyphosate use will increase nor the corresponding  
18 environmental effects.  
19

20 113. For example, a 1986 EPA Guidance for the Reregistration of Pesticide Products  
21 Containing Glyphosate (EPA Case No. 0178), identified three species of endangered species  
22 that may be affected by use of the compound in association with alfalfa (jeopardy being the  
23 highest level of effect under the Sec. 7 regulations). These species were Solano grass, the Valley  
24 elderberry longhorn beetle, and the Houston toad.  
25

26 114. EPA’s 1993 Re-registration Eligibility Decision (“RED”) for glyphosate, the most  
27 current registration for the compound, stated that additional plant species had been added to the  
28 list of endangered species since the 1986 Guidance and that many endangered plants may be at

1 risk from the use of glyphosate given the existing registered use patterns. It also reiterated that  
2 the Houston toad may be at risk from the use of glyphosate on alfalfa.

3  
4 115. EPA and USDA failed to consider the 1986 Guidance and the 1993 RED with  
5 respect to the threatened and endangered plants and animals identified as potentially jeopardized  
6 by glyphosate use in conjunction with alfalfa.

7  
8 116. In addition, EPA and USDA failed to update this analysis to include the  
9 potentially affected listed species added to the endangered species list after the completion of the  
10 RED in 1993.

11  
12 117. The listed species and critical habitats that may be affected are numerous, but the  
13 public record shows that both EPA and USDA failed to analyze the potential effects of its  
14 decision on any listed species or critical habitat.

15  
16 118. The surfactants used with glyphosate in Roundup also create environmental  
17 effects such as amphibian mortality, but these effects have not been analyzed.

18  
19 119. Moreover, USDA admitted that glyphosate use on glyphosate tolerant alfalfa may  
20 result in additional glyphosate resistant weeds.

21  
22 120. Similarly, widespread adoption of Roundup Ready technology in corn and  
23 soybeans has led to increasing problem weeds developing resistance to Roundup. Widespread  
24 planting of Roundup Ready alfalfa will worsen this problem especially where alfalfa is used in  
25 rotation with other Roundup Ready crops. However, USDA has not analyzed the cumulative  
26 effects on the development of glyphosate resistant weeds caused by the commercialization of yet  
27 another Roundup tolerant crop.

28  
121. For farmers who rotate two or more genetically engineered crops there is a  
significant risk that the increased use of glyphosate on the field will increase the appearance of

1 glyphosate resistant weeds. Moreover, these weeds will spread to agricultural lands in the  
2 surrounding areas.

3  
4 122. During the harvest of alfalfa seeds the seeds from these “superweeds” will  
5 intermix with alfalfa seeds. Alfalfa seeds are so small that it will be practically impossible to  
6 separate the alfalfa seeds from the seeds of the “superweeds.” As a result, the seeds of  
7 “superweeds” will be disseminated throughout the country when alfalfa seed is dispersed through  
8 the stream of commerce. As a consequence, the utility of using glyphosate will be reduced.

9  
10 123. The use of genetically engineered crops may also cause cross-pollination that will  
11 spread the glyphosate tolerant genes into feral alfalfa. The contaminated feral alfalfa will be  
12 harder to eradicate because cross pollination may transfer the roundup tolerant gene to feral  
13 alfalfa, thus decreasing or eliminating the ability of Roundup to control feral alfalfa.

14  
15 124. Increasing Roundup resistance in weeds and feral alfalfa will lead to use of  
16 herbicides with relatively greater environmental impacts and to increased costs for both adapting  
17 and non-adapting farmers. As “superweeds” emerge, chemical control may to shift to more  
18 toxic, persistent, and less desirable herbicides such as 2,4-D and Paraquat.

19  
20 125. There is an imminent and significant potential of contamination from genetically  
21 engineered alfalfa to non-genetically engineered alfalfa because of the concentration of  
22 production of alfalfa seed and because of the wide area over which its pollen can be spread.  
23 Genetically engineered alfalfa in any neighbor’s field up to two miles away will cross pollinate  
24 with alfalfa in the fields of organic producers. Inevitably this will result in viable genetically  
25 engineered seed being produced on organic and conventional farms that are free of genetically  
26 engineered crops.

27  
28 126. California’s dependence on honey bees as pollinators makes the state especially

1 susceptible to the contamination of non-Roundup Ready alfalfa stands by Roundup Ready alfalfa  
2 that contains transgenic traits. Honey bees have the ability to transfer traits farther than  
3 leafcutter bees. In addition, a long pollination season is required to set an alfalfa seed crop  
4 because of honey bees' inefficiency as pollinators.  
5

6 127. The unregulated use of genetically engineered alfalfa in the U.S. significantly  
7 threatens the ability of organic feed and animal producers to manage for the exclusion of  
8 genetically engineered alfalfa.  
9

10 128. No federal requirements exist to prohibit transfer of genetically engineered alfalfa  
11 to another's property. Yet, the Deregulation Determination allows the commercialization of  
12 genetically alfalfa with no restrictions. USDA refused to establish or analyze possible rules that  
13 would require farmers who plant Roundup Ready seeds to create refuge or buffer areas to avoid  
14 cross-pollination with neighbors' crops or surrounding weeds.  
15

16 129. The FONSI failed to propose specific mitigations for the transportation of  
17 genetically engineered seeds. Although the FONSI recognized the potential significant effect on  
18 non-adapting farmers it stated that the farmers, who may be adversely affected had the burden to  
19 protect themselves.  
20

21 130. Genetically engineered alfalfa will be detrimental to organic producers of animal  
22 products for food. Agricultural animal producers can sell milk, meat, and eggs at a significant  
23 premium if those products are certified as organic.  
24

25 131. Natural food consumers are highly wary of potential contamination from  
26 genetically engineered organisms. Consumers will reject organic products that are contaminated  
27 with genetically engineered material. There is zero tolerance for genetically engineered  
28 characteristics in organic markets. For example, milk and meat from cows fed with genetically

1 engineered alfalfa will be unattractive to the organic consumer. Farmers who market their  
2 products as non-genetically engineered will be forced to test their feeds to prove their marketing  
3 claims; this will raise production costs. In addition, it is unresolved whether a farm with an  
4 organic certification will lose its certification once it discovers that its products are fed with  
5 genetically engineered material and/or cannot avoid the presence of such genetic contamination  
6 on its farm.  
7

8 132. Contamination has already ended organic canola production in North Dakota, and  
9 organic soybean production has declined dramatically.  
10

11 133. This threat is of special concern to alfalfa seed growers. Alfalfa seed production is  
12 concentrated in just a few states that could be vulnerable to genetic contamination.  
13

14 134. It is also a threat to dairy and livestock producers who want to feed their cows  
15 with a diet free of genetically engineered material. This contamination could result in the loss of  
16 value-added markets and organic certification.  
17

18 135. Roundup Ready alfalfa poses unique problems to California because of the state's  
19 stake in alfalfa seed production, honey bee colonies, and the organic industry.  
20

21 136. Most California organic alfalfa producers receive a 10-20 percent premium for  
22 their hay. While dairy producers are the most numerous buyers of organic alfalfa hay, organic  
23 beef and lamb, as well as racehorse breeders and owners also contribute to this demand.  
24

25 137. In addition, consumers in export markets have refused to accept genetically  
26 engineered crops. The Deregulation Determination will affect the ability of farmers to export  
27 their alfalfa and alfalfa seed.  
28

138. The preservation of non-genetically engineered alfalfa is especially important to  
farmers with export customers. For example, buyers in Japan and South Korea, America's major

1 alfalfa export customers, have strongly stated that concerns about contamination will lead them  
2 to avoid U.S. alfalfa once the genetically engineered crop is grown here.

3  
4 139. The Deregulation Determination may fundamentally change the nature of the  
5 alfalfa grown in the United States. According to the EA, genetically engineered herbicide  
6 tolerant crops that have been granted non-regulated status have become a significant portion of  
7 the individual crops grown. For example, “[i]n 2004, significant acreages of corn (10.5 million  
8 acres or 13% of the total), upland cotton (4.2 million acres or 30% of the total) and soybean  
9 (63.6 million acres or 85% of the total) grown in the U.S. were planted with herbicide tolerant  
10 varieties (<http://usda.mannlib.cornell.edu/>). Although the data include all herbicide tolerant  
11 varieties, glyphosate tolerant ones (containing EPSPS) predominate.” (EA at 10).  
12

13  
14 140. The introduction of genetically engineered alfalfa will eventually contaminate  
15 many non-genetically engineered varieties, destroying the international “seed bank” used by  
16 conventional plant breeders. This may fundamentally change the nature and type of alfalfa  
17 grown in the U.S.

18  
19 141. Three federal agencies review new genetically engineered varieties. However,  
20 there is no comprehensive regulation of genetically engineered crops. A patchwork of laws  
21 regulates only certain aspects of genetically engineered crops.

22  
23 142. These agencies do not regulate and do not identify all the potential significant  
24 environmental effects of commercialization. In fact, the federal government does not even test  
25 genetically engineered foods for their effect on human health. The FDA has a voluntary  
26 compliance system in which the FDA only reviews data submitted by the company with the  
27 economic interest in marketing the genetically engineered product. The FDA conducted no  
28 independent tests with respect to Roundup Ready alfalfa.





1           149.   USDA improperly narrowed the analysis that it performed in the EA and failed to  
2 consider the broad array of potential environment impacts.

3           150.   The EA admittedly failed to examine the effects of Deregulation Determination  
4 on food and feed issues related to the use of genetically engineered alfalfa used as food and feed.  
5

6           151.   The EA failed to analyze the environmental and health consequences of the  
7 potential fundamental change in the type of alfalfa grown in the U.S; it failed to consider the  
8 environmental and related economic and socio-economic impacts of having Round Ready alfalfa  
9 adopted as the predominant type of alfalfa grown in the United States.  
10

11           152.   The EA failed to analyze the indirect economic and socio-economic effects on  
12 farmers of non-engineered alfalfa whose alfalfa crop and/or seed is contaminated with  
13 genetically engineered alfalfa.

14           153.   These indirect economic and socio-economic effects include reduced crop prices  
15 and loss of both domestic and export markets for U.S. growers of non-genetically engineered  
16 alfalfa hay and its seed, as well as the potential loss of certification for organic alfalfa hay seed  
17 growers.  
18

19           154.   The EA failed to analyze the environmental and related economic impacts on  
20 organic dairy and cattle farmers and farmers who maintain farms free of genetically engineered  
21 materials.  
22

23           155.   The EA failed to take a hard look at potential mitigations of the effects of the  
24 Deregulation Determination.

25           156.   The EA did not consider the cumulative impacts of the Deregulation  
26 Determination. Moreover, if USDA claims that it considered cumulative impacts, USDA failed  
27 to take a hard look at the cumulative impacts.  
28

1           157. The EA failed to provide any analysis to support its conclusion that there would  
2 be no potential harm to threatened and endangered species and their critical habitats under the  
3 ESA.  
4

5           158. The EA failed to discuss impacts on other non-target species and migratory birds.

6           159. The EA's dissimilar treatment of alternatives demonstrates an agency bias that  
7 makes the EA deficient.

8           160. USDA did not thoroughly evaluate alternatives other than the proposed  
9 deregulation action. Although it mentioned a no action alternative and a partial deregulation  
10 alternative the environmental analysis of these alternatives was lacking. The impact under  
11 Alternative B is eight pages long, whereas the "analysis" for Alternative A is one page and  
12 Alternative C is just one sentence.  
13

14           161. The alternatives were improperly discussed in a conclusory manner that were  
15 biased toward the project. The fact that the EA discussed pesticide use under the no action  
16 alternative but failed to discuss increased pesticide use associated with glyphosate-tolerant  
17 alfalfa demonstrates the agency's inconsistency and bias.  
18

19           162. The EA improperly shows a prejudgment in favor of finding no significant impact  
20 and deregulating Roundup Ready Alfalfa. The EA predetermined that if USDA chose to  
21 deregulate Roundup Ready alfalfa, USDA would issue a FONSI.  
22

23           163. Alternative B stated:

24           Under this alternative, these glyphosate tolerant alfalfa plants would no longer be  
25 regulated articles under the regulations at 7 CFR Part 340. Permits issued or  
26 notifications acknowledged by APHIS would no longer be required for  
27 introductions of glyphosate tolerant alfalfa derived from these events. A basis for  
28 this determination would include a "Finding of No Significant Impact" under the  
National Environmental Policy Act of 1969, as amended (42 USC 4321 *et seq.*;  
40 CFR 1500-1508; 7 CFR Part 1b; 7 CFR Part 342).



1           168. Section 102(2)(C) NEPA, 42 U.S.C. §4332(2)(C), requires each federal agency to  
2 prepare an EIS with respect to each major action of such agency that may significantly affect the  
3 quality of the human environment.  
4

5           169. The record demonstrated that the Deregulation Determination may cause  
6 significant environmental impacts.

7           170. In the FONSI, USDA acknowledged that glyphosate use on glyphosate tolerant  
8 alfalfa may result in additional glyphosate resistant weeds, and thus, is a significant impact.

9           171. Yet, USDA simply dismissed its own conclusion and ignored the widespread  
10 recognition in the record that genetically engineered alfalfa will create glyphosate resistant  
11 weeds.  
12

13           172. Moreover, USDA's permitting of the unexamined commercial scale-up, of  
14 genetically engineered alfalfa, poses novel, frightening, and uncertain potential effects on public  
15 health and safety and the environment.  
16

17           173. USDA's actions also are "highly controversial" and "highly uncertain or involve  
18 unique or unknown risk" within the meaning of NEPA.

19           174. With the Deregulation Determination, a significant portion, if not an  
20 overwhelming majority of the supply of U.S. alfalfa and alfalfa seed may become contaminated  
21 with genetically engineered material.  
22

23           175. In addition, the impact on animal health when genetically engineered organisms  
24 constitute a high percentage of the diet is largely unknown. For instance, Roundup Ready alfalfa  
25 would likely be added to a total mixed ration ("TMR") for livestock that may already contain Bt  
26 corn, Roundup Ready canola cake/meal, Roundup Ready soy, and/or Bt cottonseed cake/meal.  
27 The impact of the addition of Roundup Ready alfalfa on the intestinal flora/fauna in ruminants,  
28

1 their nutritional uptake, and susceptibility to pathogens is poorly understood and must be  
2 analyzed.

3 176. The cumulative effects of glyphosate and Roundup use may cause a significant  
4 impact.  
5

6 177. The environmental and economic impacts on organic farmers may cause a  
7 significant impact.

8 178. The potential contamination of Roundup Ready alfalfa on non-adapting seed  
9 growers may cause a significant impact.  
10

11 179. The Deregulation Determination may cause reasonably foreseeable direct and  
12 indirect significant environmental effects. For the reasons alleged, considered both individually  
13 and collectively, USDA's finding that there was no significant impact was and is arbitrary,  
14 capricious, an abuse of discretion and otherwise not in accordance with law, and without  
15 observance of procedures required by law, in violation of the APA.  
16

17 **THIRD CLAIM**

18 [Violation of National Environmental Policy Act and  
19 Administrative Procedure Act – Against USDA]

20 [By All Plaintiffs]

21 180. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 179, as  
22 though fully alleged herein.

23 181. USDA is the lead agency in determining whether genetically engineered alfalfa  
24 can be released into the environment without notice or permits.  
25

26 182. Yet, USDA improperly segmented the environmental analysis required for its  
27 Deregulation Determination.  
28

1 183. NEPA requires that “[p]roposals or parts of proposals which are related to each  
2 other closely enough to be, in effect, a single course of action shall be evaluated in a single  
3 impact statement.” 40 C.F.R. § 1502.4(a).  
4

5 184. Moreover, section 1502.4(a) requires an agency to use the “scoping” requirements  
6 to determine whether separate proposals are a “single course of action.”

7 185. The EPA’s establishment of glyphosate tolerance for genetically engineered  
8 varieties of alfalfa seed and the Deregulation Determination were a single course of action  
9 pursuant to NEPA and its regulations. In addition, the FDA’s Biotechnology Consultation Note  
10 was also part of the same course of action. All three decisions are connected.  
11

12 186. In fact, the EA relied on EPA’s determinations with respect to glyphosate.

13 187. It also relied on the FDA’s Biotechnology Consultation Note with respect to food  
14 and feed issues. The EA improperly relied on FDA for analysis of food and feed issues. In  
15 addition, the FDA does not mandate a thorough analysis and testing of the potential human  
16 health effects of genetically engineered animal feeds and food, such as alfalfa.  
17

18 188. EPA’s and FDA’s actions with respect to alfalfa failed to analyze the broad range  
19 of potential environmental effects. These decisions resulted in neither the preparation of EA nor  
20 an EIS.  
21

22 189. USDA failed to comply with the scoping requirements of NEPA and its  
23 regulations because it failed to include the regulatory actions by EPA and FDA that related to  
24 genetically engineered alfalfa.

25 190. The environmental and human effects of EPA’s tolerances and FDA’s  
26 Biotechnology Consultation Note should have been considered together in one environmental  
27 document with the Deregulation Determination. USDA’s failure to include analysis of these  
28

1 actions in one environmental document was and is arbitrary, capricious, an abuse of discretion  
2 and otherwise not in accordance with law, and without observance of procedures required by  
3 law, in violation of the APA.  
4

5 **FOURTH CLAIM**

6 [Violation of Endangered Species Act – Against EPA]  
7 [By CFS, Beyond Pesticides and Sierra Club]

8 191. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 190, as  
9 though fully alleged herein.

10 192. EPA set tolerances for the amount of glyphosate that can be used on herbicide  
11 resistant alfalfa in two regulatory decisions: 1) Glyphosate; Pesticide Tolerances, Final Rule, 67  
12 Fed. Reg. 60934 - 60950 (Sept. 27, 2002), which set a tolerance level of 300 ppm for alfalfa hay  
13 and forage codified at 40 CFR § 180.364(a); and 2) Glyphosate; Pesticide Tolerances, Final  
14 Rule, 70 Fed. Reg. 7861- 7864 (Feb. 16, 2005), which set a tolerance level of 0.5 ppm for alfalfa  
15 seed codified at 40 CFR § 180.364(a).  
16

17 193. Each tolerance decision was an agency action that required consultation pursuant  
18 to the ESA.  
19

20 194. The Federal Register notices for both actions failed to mention any ESA  
21 consultation.

22 195. In the Feb. 16, 2005, tolerance, EPA also failed to comply with the “Joint  
23 Counterpart Endangered Species Section 7 Consultations Regulation,” which provided EPA with  
24 alternative methods of complying with its consultation requirements. 69 Fed. Reg. 47732-62  
25 (Aug. 5, 2004).  
26  
27  
28





1           203.   USDA made only conclusory statements that the Deregulation Determination  
2 would not harm endangered or threatened species.

3           204.   In the EA, under the Proposed Action, Alternative B, which was the “approval”  
4 alternative that USDA eventually chose, the discussion of potential impacts on threatened and  
5 endangered species (“TES”), claimed “no harm.”

6           205.   “No harm” is the not the proper regulatory finding with respect to consultation.

7           206.   Moreover, the record showed that USDA failed to compile a list of species and  
8 critical habitats that the Deregulation Determination “may affect,” and failed to examine the  
9 effects of its decision.  
10

11           207.   The listed species that may be affected are numerous, but the public record shows  
12 that APHIS failed to analyze the potential effects of its decision on any listed species.  
13

14           208.   On information and belief, USDA did not consult with USFWS.

15           209.   Although the EA listed a “consultation” with a “Richard Sayre” of the USFWS  
16 Threatened and Endangered Species Division, (EA at 19), on information and belief, that  
17 official, whose actual name is Richard Sayers, has no recollection of “consulting” with USDA on  
18 the Deregulation Determination.  
19

20           210.   The APHIS Response to Comments admitted that there was no consultation with  
21 USFWS on any threatened and endangered species. It stated:  
22

23           One commenter made a reference to a no harm decision from the Fish & Wildlife  
24 Service (FWS) and indicated that the analysis is incomplete in that the  
25 Environmental Assessment fails to identify what if any species or issues it  
26 requested the FWS to address. APHIS and the Fish and Wildlife Service have a  
27 long standing agreement about these issues developed from a meeting in July  
28 1999. The agencies agreed to use a decision tree approved by FWS to determine  
whether consultation with FWS would be required for a transgenic crop variety.  
APHIS continues to use this decision tree and policy for all petition requests.  
APHIS considered all threatened and endangered species, but none were  
identified for consultation with FWS.

1 (FONSI at 10).

2  
3 211. Despite a Freedom of Information request, USDA has not provided this decision  
4 tree to CFS.

5 212. USDA improperly relied on this secret, decision tree and policy.

6  
7 213. Using the decision tree, USDA attempted to create a categorical or general  
8 approach to Section 7 compliance that violates the ESA requirement for action-specific  
9 consultations with USFWS based on “the best scientific information available.” 50 C.F.R. §  
10 402.12.

11 214. Any ESA analysis that USDA may claim to have performed through the “decision  
12 tree” was insufficient.

13  
14 215. The “no harm” decision fails to satisfy the requirements of ESA.

15 216. USDA admitted that it did not analyze increased glyphosate use and apparently  
16 deferred to EPA for issues related to pesticide use in the environment, including ESA issues.  
17 However, there was no indication in the record that USDA’s reliance on EPA included any  
18 consultation on ESA issues, and with respect to its tolerance decisions, EPA failed to properly  
19 consult pursuant to ESA.  
20

21 217. Moreover, USDA failed to examine EPA’s existing record on glyphosate and its  
22 potential affects on threatened and endangered species. On information and belief, USDA also  
23 failed to consult on the potential affects of the surfactants used in conjunction with glyphosate.  
24

25 218. Additionally, invasive weeds are known threats to many U.S. threatened and  
26 endangered species and the critical habitats upon which they depend. Approval of glyphosate  
27 tolerant alfalfa will increase the number of glyphosate resistant invasive weeds and thus may  
28

1 affect many additional listed species and critical habitats. USDA did no analysis or consultation  
2 on this issue.

3 219. USFWS did not concur with the “no harm” determination.

4 220. On information and belief, USDA failed to consult formally or informally with  
5 USFWS in connection with the Deregulation Determination in violation of Section 7(a)(2) of the  
6 ESA and its implementing regulations.  
7

8 **SIXTH CLAIM**

9 [Violation of Plant Protection Act and Administrative  
10 Procedure Act – Against USDA]

11 [By All Plaintiffs]

12 221. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 2200, as  
13 though fully alleged herein.

14 222. USDA made six conclusions supporting its Deregulation Determination including  
15 that the determination “will not harm threatened or endangered species or organisms that are  
16 endangered species or organisms that are beneficial to agriculture and []should not reduce the  
17 ability to control pests and weeds in alfalfa or other crops.”

18 223. The record does not support the conclusion that the Deregulation Determination  
19 “will not harm” threatened or endangered species. USDA has made only conclusory statements  
20 to this effect.  
21

22 224. Moreover, in the FONSI, USDA’s freely admits that glyphosate tolerant alfalfa  
23 may result in additional glyphosate resistant weeds. USDA recognizes that this is a potential  
24 problem.  
25

26 225. In addition, the record contains extensive evidence that the genetically engineered  
27 glyphosate tolerant alfalfa will increase glyphosate resistant weeds.  
28

1           226.    Since evidence in the record showed that Deregulation Determination will  
2 increase glyphosate tolerant weeds, USDA’s conclusion that the Deregulation Determination  
3 “should not reduce the ability to control pests and weeds in alfalfa or other crops” is contrary to  
4 the evidence in the record.  
5

6           227.    For the reasons alleged, the Deregulation Determination is unsupported by the  
7 evidence in the record and was and is arbitrary and capricious, an abuse of discretion and  
8 otherwise not in accordance with law, and without observance of procedures required by law, in  
9 violation of the APA.  
10

11   **PRAYER FOR RELIEF**

12    WHEREFORE, Plaintiffs respectfully request that the Court:

13           1.       Issue a declaratory judgment that USDA violated and is violating the National  
14 Environmental Policy Act and the Administrative Procedure Act by failing to prepare an  
15 adequate Environmental Assessment;  
16

17           2.       Issue a declaratory judgment that the Deregulation Determination may cause  
18 significant environmental effects;

19           3.       Require that USDA prepare an Environmental Impact Statement on the  
20 Deregulation Determination;  
21

22           4.       Issue a declaratory judgment that the Deregulation Determination, EPA’s  
23 Glyphosate Tolerance decisions, and FDA’s consultation note constitute a single course of action  
24 that should be considered in one environmental document;

25           5.       Issue a declaratory judgment that EPA violated and is violating the Endangered  
26 Species Act by failing to comply with the consultation requirements of Section 7(a)(2) of the  
27

1 Endangered Species Act with respect to its setting of glyphosate tolerances for alfalfa and alfalfa  
2 seed;

3           6.       Issue a declaratory judgment that USDA violated and is violating the Endangered  
4 Species Act by failing to comply with the consultation requirements of Section 7(a)(2) of the  
5 Endangered Species Act with respect to the Deregulation Determination;

6           7.       Issue a declaratory judgment that USDA violated and is violating the Plant  
7 Protection Act.

8           8.       Enter an order rescinding the Deregulation Determination;

9           9.       Enter appropriate injunctive relief to ensure that defendants comply with PPA,  
10 NEPA, ESA, and APA, and to avoid irreparable harm to plaintiffs and the ecosystem;

11           10.      Award plaintiffs the costs of this litigation, including reasonable attorney's fees;  
12 and

13           11.      Grant such other relief as the Court deems just and proper.  
14  
15

16 Dated: February 16, 2006  
17

18 By:

19 \_\_\_\_\_  
20 WILLIAM B. ROSTOV  
21 MIYOKO SAKASHITA  
22 JOSEPH MENDELSON III

23 CENTER FOR FOOD SAFETY

24 Attorneys for Plaintiffs  
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27  
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