

Wiley Rein Represents Agricultural Chemical Industry in Major Ninth Circuit Win

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Washington, DC—On February 2, 2017, the U.S. Court of Appeals for the Ninth Circuit affirmed key portions of a complex 2014 district court ruling regarding the relationship between the Endangered Species Act (ESA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), in the case *Center for Biological Diversity v. USEPA* (No. 14-16977). Wiley Rein LLP represented a number of intervening agricultural industry groups, led by the trade association CroLife America, which urged affirmance. David B. Weinberg, co-chair of the firm's Environment & Safety Practice, argued the case for the industry and agricultural intervenors, and partner Steven Richardson and associate Roger H. Miksad were also part of the Wiley Rein team.

The case addressed several jurisdictional issues central to cases in which activists have challenged the Environmental Protection Agency's (EPA) compliance with ESA "consultation" requirements. The lower court had sided with the EPA and the intervenors in rejecting the theory that EPA's continuing pesticide regulatory authority created an ongoing, unlimited obligation for EPA to delay pesticide registration activities while the agency "consulted" with either the U.S. Fish & Wildlife Service or the National Marine Fisheries Service about possible impacts on endangered species. To the contrary, the court held that only specific affirmative actions triggered any obligation to consult. The court also held that most such claims must be brought in the courts of appeals, within statutory-specified deadlines, in

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connection with any other objections to a specific EPA regulatory decision, and that those claims that can be heard by the district courts are limited by the standard six-year federal statute of limitations.

The decision is important both in the Ninth Circuit, where most cases challenging pesticide registration actions for EPA's alleged failure to comply with the ESA have been brought, and in the D.C. Circuit, where many of the same issues are raised by pending cases. It is the third appellate court case dealing with ESA-FIFRA issues that Mr. Weinberg has argued in recent years.

The case also was covered in *Law360*.