



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

SUBJECT: Risks of Carbofuran to, and Effects Determinations for the Delta Smelt, San Francisco Garter Snake, San Joaquin Kit Fox, and Valley Elderberry Longhorn Beetle

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This memorandum serves as my assessment and effects determination relative to the Delta Smelt, San Francisco Garter Snake, San Joaquin Kit Fox, and Valley Elderberry Longhorn Beetle and designated critical habitat. This assessment and determination was conducted consistent with a Stipulated Injunction in CBD v. EPA¹.

In March 2009 the Environmental Protection Agency ("the Agency") published in the Federal Register, as requested by the registrant of carbofuran, the voluntary use termination of flowable carbofuran use in or on alfalfa, cotton, ornamentals, popcorn, small grains (wheat, oats, and barley), soybeans, sugarcane, sweet corn, and tobacco (74 FR 11551). Carbofuran is still registered for use within the United States on two non-food crops and four food/feed crops. Use of carbofuran on the two non-food crops (spinach for seed and pine seedlings) is prohibited within California. Carbofuran can be applied to four food/feed crops: field corn, potatoes (WA, ID, OR only), pumpkins and sunflowers; however, in May 2009, the tolerances for carbofuran were revoked (74 FR 23046). As a result, any field corn, potatoes, pumpkins, or sunflowers treated with carbofuran cannot legally be transported off the farm and residues of carbofuran found on these crops would result in a violation of the Federal Food, Drug and Cosmetic Act.

In January 2010, the sole registrant of carbofuran indicated that it would no longer market carbofuran pending a court decision regarding whether EPA's tolerance revocations would be upheld. The registrant further committed to buy back unopened containers of carbofuran. The court upheld EPA's tolerance revocation decision (except for import tolerances) in July of 2010. While import tolerances permit carbofuran treated products to enter the country, they do not permit domestic use of carbofuran and they present no exposure pathway for the listed species at issue or their designated critical habitat. Based on all the information above the Agency has determined that carbofuran should not be currently used in California.

This Effects determination focuses on the Delta Smelt (DS), the San Francisco Garter Snake (SFGS), the San Joaquin Kit Fox (SJKF), and the Valley Elderberry Longhorn Beetle (VELB), and designated critical habitat, addressing provisions of a stipulated injunction entered into by the federal government to resolve claims made by plaintiffs against EPA in a court case (CBD v. EPA). This Effects Determination concludes that:

¹ May 17, 2010 Stipulated Injunction in Center for Biological Diversity v. United States Environmental Protection Agency. (Case No.: 07-2794-JCS).

Because portions of the action area relevant to the DS, SFGS, SJKF, and VELB are wholly contained within the state of California and carbofuran is not used in California, Carbofuran will have No Effect on the DS, SFGS, SJKF, and VELB. Additionally, the Agency has determined that there is no potential for modification of DS, SFGS, SJKF, or VELB designated critical habitat since carbofuran can no longer be used in California.

This determination was subjected to internal Agency peer review. Please let me know if you have any questions regarding this assessment and effects determination for carbofuran.