



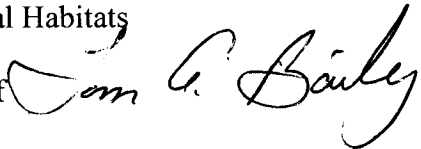
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF PREVENTION, PESTICIDES
AND TOXIC SUBSTANCES

MEMORANDUM

October 10, 2008

SUBJECT: Effects Determinations for Phorate Relative to the California Red-Legged Frog, San Joaquin Kit Fox, Bay Checkerspot Butterfly, Valley Elderberry Longhorn Beetle, and Designated Critical Habitats

FROM: Tom Bailey, Chief 
ERB 2
Environmental Fate and Effects Division

TO: Arthur-Jean B. Williams, Associate Director
Environmental Fate and Effects Division

Attached is an assessment to evaluate potential direct and indirect effects on individuals of the federally threatened or endangered California red-legged frog (*Rana aurora draytonii*) (CRLF), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (VELB), bay checkerspot butterfly (*Euphydryas editha bayensis*) (BCB) and San Joaquin kit fox (*Vulpes macrotis mutica*) (SJKF), arising from FIFRA regulatory actions regarding all registered uses of Phorate in California. In addition, this assessment evaluates whether the action is expected to result in modification of designated critical habitat for the CRLF, VELB, and BCB. This ecological risk assessment has been prepared consistent with the settlement agreement entered into by the federal government to resolve claims made by plaintiffs against EPA in a court case (CBD v. EPA¹) and entered in Federal District Court for the Northern District of California on October 20, 2006. This assessment also addresses three species for which Phorate was alleged to be of concern in a separate suit, *Center for Biological Diversity (CBD) vs. EPA et al.* (Case No. 07-2794-JCS).

The attached assessment was conducted consistent with the Agency's Overview Document². Effects determinations for this assessment are summarized below:

- Based on the best available information, the Agency makes a May Affect and Likely to Adversely Affect (LAA) determination for the CRLF, BCB, VELB, and SJKF. This determination is based on Phorate's potential for direct effects and indirect effects due to potential decreases in aquatic and terrestrial prey items.

¹ Settlement agreement of October 20, 2006: Center for Biological Diversity v. United States Environmental Protection Agency. Civ. No: 02-1580-JSW(JL)).

² Overview of the Ecological Risk Assessment: Process in the Office of Pesticide Programs, U.S. Environmental Protection Agency: Endangered and Threatened Species Effects Determinations: January 23, 2004.

- Additionally, the Agency has determined there is the potential for modification of designated critical habitat. This is based on the potential for modification of designated critical habitat due to the potential loss of aquatic and terrestrial prey items for CRLF and potential for a small reduction in biomass of the host plant for VELB.
- Additionally, the Agency has determined that there is not the potential for modification of BCB designated critical habitat from the use of the phorate. There is no exposure to BCB critical habitat from registered use of phorate as a granular.

As required by the Alternative Consultation Agreement EPA entered into with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services), I have been trained by the Services to make such determinations. Additionally, this assessment was subjected to internal Agency peer review throughout its development. The review panel included Dr. Melissa Panger, Dr. Edward Odenkirchen, and Ms. Anita Pease, other scientists who have been trained by the Services to make such determinations.

Please let me know if you have any questions regarding this assessment and effects determination for Phorate relative to the CRLF, BCB, SJKF, and VELB and its designated critical habitat.

cc: Steven Bradbury
Debbie Edwards

Attachments