# Notes on the Stipulated Injunction and Order for Protection of California Red-Legged Frog

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# California Red-Legged Frog

- Lawsuit brought about by Center for Biological Diversity vs. U.S. EPA and Croplife America, American Forest & Paper Association, Western Plant Health Association, Oregonians for Food and Shelter and Syngenta Crop Protection.
- This injunction is the result of the settlement reached in California's Northern District Court.
- Imposes prohibitions for use of 66 active ingredients 200 feet by air, and 60 feet by ground from California red-legged frog's aquatic and upland habitats occurring in 33 counties.
- Effective date 10/20/06.

# Counties Impacted by this Injunction

Alameda, Amador, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Los Angeles, Marin, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Bernardino, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, Ventura, and Yuba.

# Basis for the Lawsuit

- The suit by the Center for Biological Diversity alleged that U.S. EPA failed to solicit U.S. Fish & Wildlife Service (FWS) formal consultation on the risks from 66 pesticides to California red-legged frog (CRLF).

- CRLFs are listed as threatened under the Endangered Species Act.

# Section 7 Consultation Schedule

- "The EPA shall make effects determinations and initiate consultation with the FWS regarding the potential effects of 66 pesticide active ingredient registrations on the California red-legged frog."
- "Effects determinations and initiation of consultation for all 66 pesticides shall be completed (see list on following slides) within 36 months of the date of this order."
- Effects determinations by EPA continuing. Active Ingredients (AI) with effects determinations completed are highlighted.
- USFWS must review EPA's effects determinations and produce a Biological Opinion for each AI.

# Active Ingredients Affected

- 1,3-dichloropropene
- 2,4-D
- Acephate
- Alachlor
- Aldicarb
- Atrazine
- Azinphos-methyl
- Bensulide
- Bromacil
- Captan
- Carbaryl
- Chloropicrin
- Chlorothalonil
- Chlorpyrifos
- Chlorthaldimethyl
- Diazinon
- Dicofol
- Diflubenzuron
- Dimethoate
- Disulfoton
- Diuron
- Endosulfan

# Active Ingredients Affected (cont.)

- EPTC
- Esfenvalerate
- Fenamiphos
- Glyphosate
- Hexazinone
- Imazapyr
- Iprodione
- Linuron
- Malathion
- Mancozeb
- Maneb
- Metam Sodium
- Methamidophos
- Methidathion
- Methomyl
- Methoprene
- Methyl parathion
- Metolachlor
- Molinate
- Myclobutanil
- Naled
- Norflurazon

# Active Ingredients Affected (cont.)

- Oryzalin
- Oxamyl
- Oxydemeton-methyl
- Oxyfluorfen
- Paraquat dichloride
- Pendimethalin
- Permethrin
- Phorate
- Phosmet
- Prometryn
- Propanil
- Propargite
- Propyzamide
- Rotenone
- Simazine
- SSS-tributyl phosphorithiolate
- Strychnine
- Thiobencarb
- Triclopyr (BEE + TEA)
- Trifluralin
- Vinclozolin
- Ziram

# Interim Injunctive Relief

- Use of the listed pesticides is ENJOINED, VACATED and SET ASIDE –in plain English- prohibited, in all areas described as *Aquatic Feature* or *Upland Habitat* as defined by the Center for Biological Diversity.
- Use is also prohibited in all areas described as *Aquatic breeding*, *Non-breeding aquatic* or *Upland* critical habitat as described for CRLF by FWS on April 13, 2006 Federal Register Notice.

http://www.epa.gov/oppfead1/endanger/litigation/redleg-frog/definition.htm

U.S. Environmental Protection Agency

# Pesticides: Endangered Species Protection Program

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[logo] US EPA  here: EPA Home » Pesticides » Environmental Effects » Endangered Species Protection Program  Court Issues Stipulated Injunction Regarding Pesticides and the California Red-legged Steps and Information for Pesticide Users » Definitions

Pesticides Home

Environmental Effects Home

Endangered Species Protection Program Home

List of Species

Pesticide Use Limitations (by County)

Court Ordered Limitations

ESPP Database

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## Definitions

**Aquatic breeding critical habitat.** Defined in 50 CFR 17.95(d)(2)(i) as standing bodies of fresh water (salinity < 7.0 parts per thousand) including: natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest years.

**Non-breeding aquatic critical habitat.** Defined in 50 CFR 17.95(d)(2)(ii) as fresh water habitats that may or may not hold water long enough for the frog to complete its lifecycle but that do provide for shelter, foraging, predator avoidance, and aquatic dispersal. Wetland habitats that meet these elements include, but are not limited to: plunge pools within intermittent creeks, seeps, quiet water refugia during high water flows, springs of sufficient flow to withstand summer dry periods.

**Upland critical habitat.** Defined in 50 CFR 17.95(d)(2)(iii) as upland areas within 200 ft of the edge of riparian vegetation or dripline surrounding aquatic and riparian habitat and comprised of vegetation such as grasslands, woodlands and/or wetland/riparian plant species that provides shelter, forage, predator avoidance for the frog. Can include natural features such as boulders, rocks, organic debris, small mammal burrow, and moist leaf litter or manmade features such as industrial debris and agricultural features.

**Aquatic features.** Defined as fresh-water habitats in or near lowlands or foothills with dense, shrubby, or emergent vegetation. Such areas include natural or manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent waterbodies that typically become inundated during winter rains such as plunge pools, intermittent creeks, seeps, and quiet water refugia. Such areas do not include those areas not otherwise meeting the definition of aquatic breeding habitat and non-breeding aquatic habitat.

**Upland habitats.** Defined as all areas that are both within 200 feet of the mean high-water mark of an aquatic feature and meet the definition of upland habitat as it applies to Critical Habitat.

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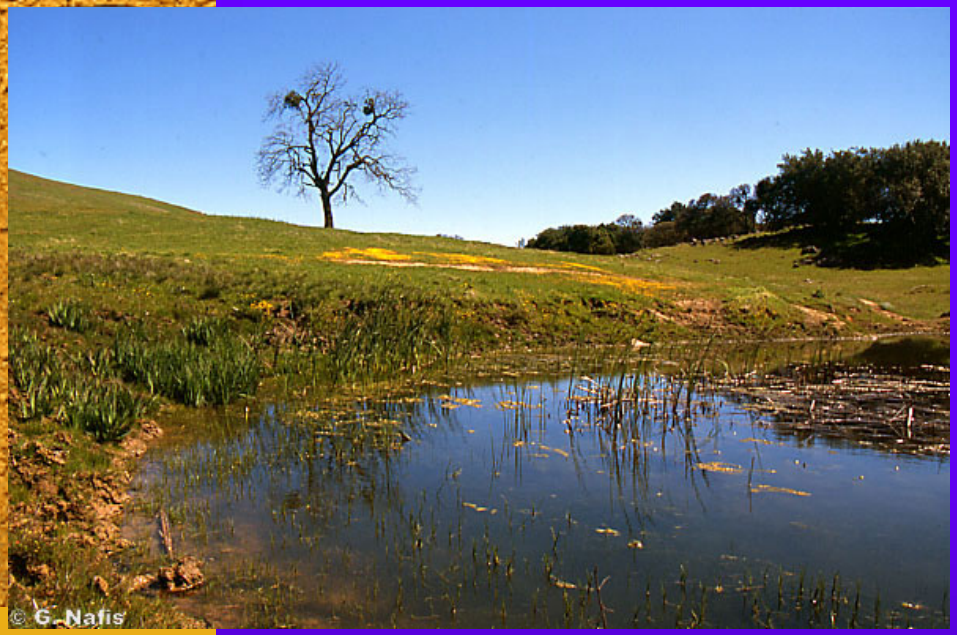
Last updated on Tuesday, April 17th, 2007.
http://www.epa.gov/oppfead1/endanger/litigation/redleg-frog/definition.htm
Print As-Is

# Definitions (*per FWS Fed. Reg. Notice of 4/13/2006*)

- *Aquatic Breeding Habitat:* Consists of low-gradient fresh water bodies, including natural and manmade (e.g. stock) ponds, backwaters within streams and creeks, marshes lagoons, and dune ponds. It does not include deep lakes and reservoirs 50 acres (20 ha) or larger in size.

  To be considered essential breeding habitat, the aquatic feature must have the capability to hold water for a minimum of 20 weeks in all but the driest of years. This is the average amount of time for egg, larvae, and tadpole development and metamorphosis so that juveniles can become capable of surviving in upland habitats.

# CRLF Breeding Ponds



# Definitions (*per FWS Fed. Reg. Notice of 4/13/2006*)

- *Non-Breeding Aquatic Habitat:* Is essential for providing space, food, and cover necessary to sustain California red-legged frogs. It also includes intermittent creeks, seeps and springs. CRLFs can use large cracks in the bottom of dried ponds as refugia to maintain moisture and avoid heat and solar exposure.

# Definitions

- *Aquatic Feature*: For the purpose of this injunction (as defined by the Center for Biological Diversity), includes fresh-water habitats in or near lowlands or foothills with dense, shrubby, or emergent vegetation. These include natural or manmade ponds, slow moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains.

# CRLF Non-Breeding Aquatic Habitat

# Definitions (continued)

- *Upland Habitat:* For the purpose of this injunction (as defined by the Center for Biological Diversity), includes all areas that are both within 200 feet of the mean high-water mark of an *Aquatic Feature* and meet the definition of upland habitat described by the Fish & Wildlife Service (FWS) in their Federal Register Notice of April 13, 2006 (see next slide).

# Definitions (*per FWS Fed. Reg. Notice of 4/13/2006*)

- *Upland Habitat:* Consists of natural areas within 200 ft. (60 m) of the edge of the riparian vegetation or drip line. This is based on the dispersal capabilities of CRLFs and research identifying the use of upland areas by them. Suitable upland habitat includes structure that provides shade, moisture, and cooler temperatures. This structure may be natural (spaces under boulders, rocks, downed trees, logs), or it could be manmade (industrial debris, drains, watering troughs, abandoned sheds, hay stacks, etc.). CRLFs will also use small mammal burrows and moist leaf litter as refugia.

# Upland Habitat

# CRLF Populations Outside the Final Critical Habitat

- EPA's authorization of any use of any of the 66 pesticides is prohibited in all *Aquatic Features* and *Upland Habitats* found in the 564 sections of California outside the Final Critical Habitat designated by FWS on April 13, 2006.

# CRLF Injunction Maps from U.S. EPA

- EPA has posted on its Web site maps of the areas within California affected by the injunctive relief.

http://www.epa.gov/oppfead1/endanger/litstatus/redleg-frog/steps-info.htm

Pesticides Home

Environmental Effects Home

Endangered Species Protection Program Home

List of Species

Pesticide Use Limitations (by County)

Court Ordered Limitations

ESPP Database

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# Steps and Information for Pesticide Users

This page is available in a PDF printable version (Steps and Information for Pesticide Users, 5 pages, 50 Kb, about PDF)

## Information to Assist Pesticide Users in Determining Whether the Injunction Applies to their Proposed Pesticide Use

On October 20, 2006, the Federal District Court for the Northern District of California issued a Stipulated Injunction that resolves a case brought against EPA by the Center for Biological Diversity. The court's injunction puts in place buffer areas around certain habitats of the California red-legged frog, and disallows use of certain pesticides within those habitats and buffer zones. EPA is providing this information to help pesticide users identify those pesticides and areas subject to the injunction. The following four steps will help you determine whether the injunction applies to your proposed pesticide use:

1. Active Ingredients Subject to the Injunction
2. General Geographic Areas Subject to the Injunction
3. Exceptions to the Injunction
4. Determining Whether a Specific Proposed Application Site is Subject to the Injunction

## Step 1 – Active Ingredients Subject to the Injunction

The court's injunction only addresses pesticides containing certain ingredients. Are you planning to apply a pesticide product containing one or more of the following pesticide active ingredients? If you answer "no", the court's injunction does not apply to the pesticide use. If you answer "yes" go to step 2. *Note: the active ingredient in a pesticide product may be found on the front panel of the product label under "Ingredients".*

As EPA completes its review of these pesticides, some may no longer be subject to the injunction. If the active ingredient below is in [brackets], its review is complete and is no longer subject to the injunction.

| | | | |
|---|---|---|---|
| 2,4-D | Diflubenzuron | Methamidophos | Phorate |
| Acephate | Dimethoate | Methidathion | Phosmet |
| Alachlor | Disulfoton | Methomyl | Prometryn |
| Aldicarb | Diuron | Methoprene | Pronamide |
| Atrazine | Endosulfan | Methyl parathion | Propanil |
| Azinphos-methyl | EPTC | Metolachlor | Propargite |
| Bensulide | Esfenvalerate | Molinate | Rotenone |

| | | | |
|---|---|---|---|
| Chlorothalonil | Iprodione | Oxamyl | Triclopyr |
| Chlorpyrifos | Linuron | Oxydemeton-methyl | Trifluralin |
| DCPA | Malathion | Oxyfluorfen | Vinclozolin |
| DEF | Mancozeb | Paraquat dichloride | Ziram |
| Diazinon | Maneb | Pendimethalin | |
| Dicofol | Metam sodium | Permethrin | |

⇧Top of page

## Step 2 – General Geographic Areas Subject to the Injunction

The injunction addresses pesticide use only within and around certain geographic areas designated by the US Fish and Wildlife Service as critical habitat, and specified non-critical habitat 'sections'. Sections are defined one-square mile areas of land, based on the Meridian-Township-Range-Section (MTRS) geographic system. These geographic areas are within one or more of 33 counties within California.

Are you planning to apply the pesticide in one or more of the following counties in California? If you answer "no", the court's injunction does not apply to the pesticide application. If you answer "yes", click on the county name to view a map of critical habitat and non-critical habitat sections within that county to which the injunction applies.

Is your proposed use within 400 feet of the general critical habitat areas or non-critical habitat sections? If you answer "no", the court's injunction does not apply to your pesticide application. If you answer "yes", continue to step 3.

You will need Adobe Acrobat Reader to view some of the files on this page. See EPA's PDF page to learn more.

| | | | | |
|---|---|---|---|---|
| Alameda | Los Angeles | Placer | San Luis Obispo | Stanislaus |
| Amador | Marin | Plumas | San Mateo | Tehama |
| Butte | Mendocino | Riverside | Santa Barbara | Tuolumne |
| Calaveras | Merced | San Benito | Santa Clara | Ventura |
| Contra Costa | Monterey | San Bernardino | Santa Cruz | Yuba |
| El Dorado | Napa | San Francisco | Solano | |
| Fresno | Nevada | San Joaquin | Sonoma | |

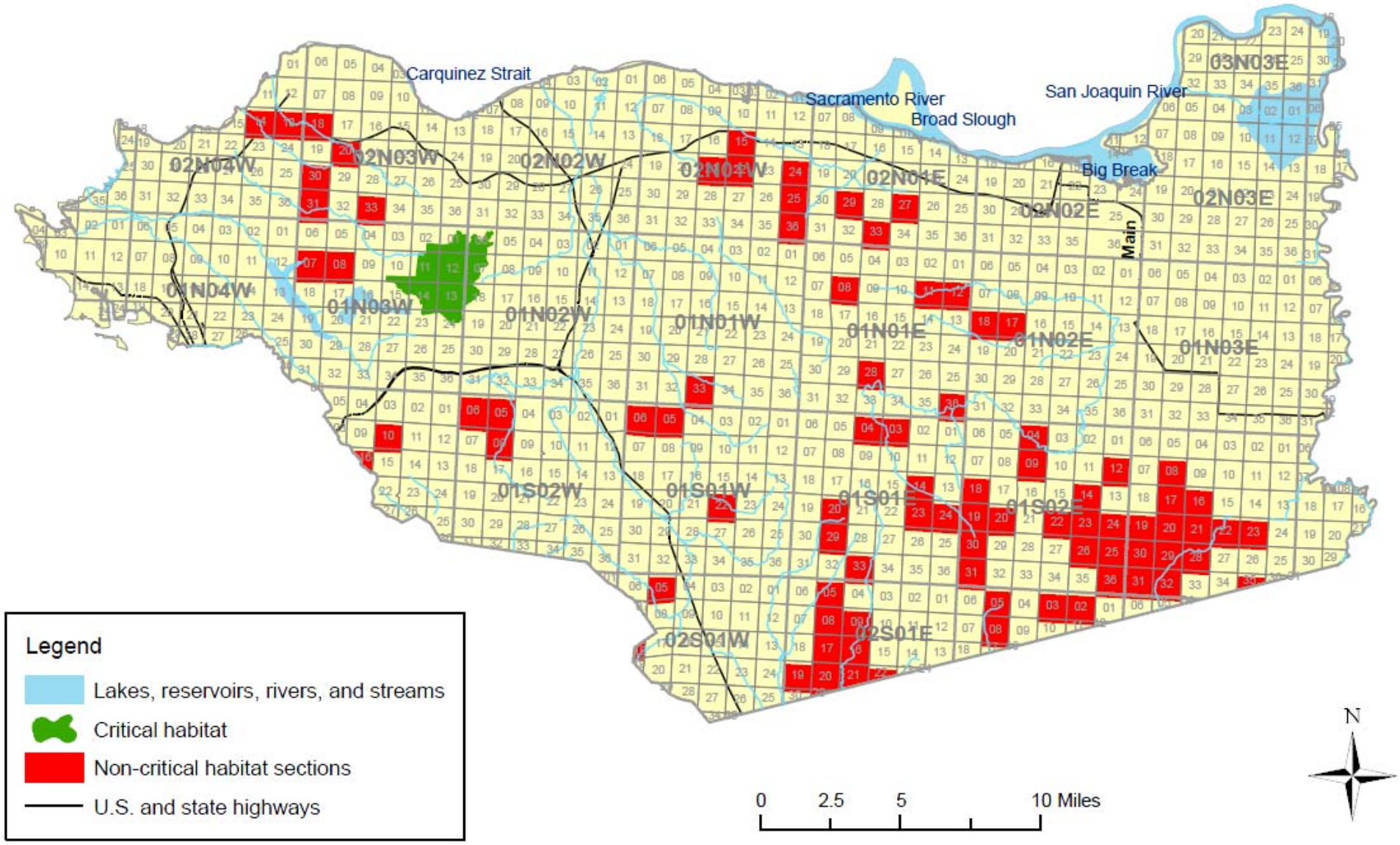
⇧Top of page

## Step 3 - Exceptions to the Injunction

Some pesticide uses are exempt from the court's injunction or have exceptions associated with them. Review the list of exceptions below. After reviewing these exceptions, if you determine the injunction still applies to your proposed pesticide use, continue to step 4.

- Pesticide Uses Exempt from the Injunction
- Pesticide Uses Subject to Reduced Buffer Areas

# Contra Costa County, California




**The water features shown on this map are for the sole purpose of geographic reference, and do not represent the aquatic habitat of the California red-legged frog**

# Buffer Areas Imposed

- Ground Use Buffer: a) All areas within 60 feet from the edge of aquatic breeding, non-breeding aquatic or upland critical habitat for CRLF.

  b) All areas within 60 feet from the edge of Aquatic Features or Upland Habitats for CRLF within listed sections.

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# Buffer Areas Imposed (continued)

- Aerial Use Buffer: a) All areas within 200 feet from the edge of aquatic breeding, non-breeding aquatic or upland critical habitat for CRLF.

  b) All areas within 200 feet from the edge of Aquatic Features or Upland Habitats for CRLF within the listed sections.

# In Summary…

- No-use buffers for ground applications can measure up to 260 feet from the edge of CRLF habitats in those areas where upland includes natural lands or fields that have remained fallow for several years:

  200’ upland + 60’ ground buffer.

- Likewise, no-use buffers for aerial applications can measure up to 400 feet from the edge of CRLF habitats in the above mentioned areas:

  200’ upland + 200’ aerial buffer.

# Pesticide Programs Excluded

- Public Health Vector Control Programs
- Invasive Species and Noxious Weed Control Programs**
- Endangered Species Act-Approved Uses

** Some restrictions must be followed (next slide)

# Restrictions to be followed by Invasive Species and Noxious Weed Control Programs

- Application of pesticides shall be limited to localized spot treatments using hand held devices and may not occur within 15 feet of CRLF aquatic breeding or non-breeding aquatic critical habitats as defined by FWS (4/13/2006); or 15 feet of Aquatic Features for CRLF within the 564 sections mentioned;

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# Restrictions to be followed by Invasive Species and Noxious Weed Control Programs (continued)

- the pesticides cannot be used when precipitation is occurring or is forecast to occur within 24 hours;
- all spraying must be overseen by a certified applicator; and
- for 2,4-D and triclopyr, only the amine formulations can be used.

# Specific Pesticide Product or Use Exemptions

- Indoor Uses.
- Tree injection.
- Cattle Ear Tags.
- Home potted plants.
- Flea and Tick collars for dogs and cats.
- Pesticide use in manufacturing of end-use products.
- Basal bark application to individual plants (60’ buffer from habitat required).

# Specific Pesticide Product or Use Exemptions (still require a 60’ buffer from habitat)

- Use of 1,3-dichloropropene and Chloropicrin.
- Spot treatment of wasp or hornets nests.
- Spot treatments with hand- held devices on roadsides, rights-of-way, pastures, lawns, forests.
- Individual tree removal by cut stump application.
- Pesticides in bait stations.

# EPA's Public Notification Requirements

## Bilingual Brochure Mailed to All Certified Applicators

### FROGS AND PESTICIDE HAZARDS

Exposure to some pesticide products may harm frogs or their habitat

*Español al dorso*

The U.S. District Court for the Northern District of California recently issued a court order requiring EPA to assess the potential effects of 66 pesticide active ingredients to the California red-legged frog. Further, the Order requires EPA develop this brochure to address various requirements in the court order. EPA is making this brochure available through our web site and by direct mail to certain certified applicators in California and certain other parties as directed by the court.

#### Frogs may be particularly susceptible to harm from environmental pollutants

Like all amphibians, frogs absorb some of the oxygen and water they need to survive through their skin. There are many advantages to having permeable skin, like being able to breathe in and out of water. But there are disadvantages as well. In addition to oxygen and water, chemicals can easily penetrate the skin of an amphibian and enter its body. This is one of the reasons why frogs may be particularly susceptible to potential harm from pesticides and environmental pollutants.

#### In the water and on the land

Amphibians are characterized by their special anatomy that allows them to live in and out of the water. Frogs, for example, start as tadpoles that live in water and then transform into frogs that live on land. This means that they may be exposed to both aquatic and terrestrial pollution.

Amphibians are also threatened by pollutants in the environment because their eggs do not have a hard shell acting as a barrier between the un-hatched amphibian and the water that surround it.

#### Featured species: The California red-legged frog

The California red-legged frog (*rana aurora draytonii*) is the largest native frog in the western United States. It is brown, dark green, or black, and has a red underbelly.

The decline of the California red-legged frog began in the mid 1800s when mining operations filled California streams with mud, silt, and rock. Later in that century the California red-legged frog was harvested for food. More recently, competition and predation by bullfrogs have added to the decline of this threatened species.

### LAS RANAS Y LOS PELIGROS DE LOS PESTICIDAS

La exposición a algunos pesticides puede ocasionar daño a las ranas o a su habitát

*For English, turn over*

El tribunal de distrito de EE.UU. para el Distrito Norte de California recientemente emitió una orden que requiere que EPA evalúe los efectos potenciales de 66 ingredientes activos de pesticidas en la rana pata roja de California. Adicionalmente, la orden requiere que EPA desarrolle este folleto para cumplir con varios requisitos de la orden del tribunal. EPA está ofreciendo este folleto a través de su sitio Web y distribuyéndolo por correo a ciertos aplicadores certificados en California y otras entidades dictaminadas por la tribunal.

#### Las ranas pueden ser especialmente vulnerables a los daños de los contaminantes ambientales

Como todos los anfibios, las ranas absorben parte del oxígeno y del agua que necesitan para sobrevivir a través de su piel. El tener una piel permeable ofrece muchas ventajas, como la capacidad de respirar dentro y fuera del agua, pero también presenta desventajas. Además del oxígeno y el agua, las sustancias químicas también pueden penetrar fácilmente la piel de los anfibios y entrar a sus organismos. Esta es una de las razones por las que las ranas pueden ser especialmente vulnerables a daños potenciales causados por pesticidas y contaminantes

#### En el agua y en la tierra

Los anfibios se caracterizan por su anatomía única que les permite vivir dentro y fuera del agua. Las ranas, por ejemplo, comienzan como renacuajos que viven en el agua y después se convierten en ranas que viven en la tierra. Esto significa que pueden estar expuestos tanto a la polución acuática como a la polución terrestre.

Los anfibios también se ven amenazados por contaminantes ambientales pues sus huevos no tienen una cáscara dura que actúe como una barrera entre el anfibio que no ha salido del cascarón y el agua que lo rodea.

#### Especie destacada: La rana pata roja de California

La rana pata roja de California (*rana aurora draytonii*) es la rana nativa más grande en el oeste de los Estados Unidos. Es de color marrón, verde oscuro o negro, y tiene un bajo vientre rojo.

La rana pata roja de California empezó a mermar a mediados del siglo diecinueve cuando las operaciones mineras llenaron los ríos californianos de barro, cieno y roca. Posteriormente en ese siglo, la rana pata roja de California fue explotada con propósitos alimenticios. Más recientemente, la competencia y depredación por parte de la rana toro (o rana mugidora)

# CRLF Brochure Distribution

- To all commercial certified applicators within California.
- To all private certified applicators within the 33 counties included in the injunction.
- To the registrants of the 66 pesticides.
- To California Department of Pesticide Regulation, California Department of Fish & Game, U. S. Fish & Wildlife Service Pacific Region.
- Also, 250 copies to each CAC and Cooperative Extension Agent offices in the 33 counties included in the Injunction.

# Injunction and Order Terminating Events

- As EPA goes through formal 7(A)(2) consultation with USFWS on each of the 66 active ingredients, and USFWS issues a Biological Opinion including a “not likely to adversely affect” statement for each active ingredient, it will in turn will be removed from the list;
- For those AIs found to affect the California Red-legged frog, USFWS must develop Reasonable and Prudent Alternatives (RPAs)for EPA to implement.

# Scope of the Injunction and Order

- This order does not require U.S. EPA to take any action under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) including, but not limited to, any action to suspend, cancel, or modify the registration of any pesticide.

# Enforcement

- This Injunction is specific to the Center for Biological Diversity and U.S. EPA.
- FIFRA is not a mechanism to enforce the injunction, nor is it enforced by California state and local government through pesticide regulations or permit conditions.
- It can only be enforced through citizen law suits.

# What to do now…

- Until a final decision is made on any of the 66 active ingredients under this injunction, follow the Court Ordered no-use buffers of 200 feet (aerial application) or 60 feet (ground application) from CRLF habitats.
- If you are part of a public Vector Control or Noxious Weed Eradication program check for your exemptions under this injunction.

# Effects Determinations by EPA

- EPA expects to produce 7-10 effects determinations every 3-4 months. At the same time, they will be initiating formal consultation with the U.S. Fish & Wildlife Service (FWS).
- As a result of additional injunctions and litigation, effects determinations are being performed concurrently for CRLF and the species included in the Bay Area injunction.
- Effects determinations are being posted at:

http://www.epa.gov/oppfead1/endanger/litstatus/effects/redleg-frog/index.html

# Effects Determinations (continued)

- Once the U.S. Fish & Wildlife Service (FWS) produces each Draft Biological Opinion, there is a 90-day period for public comment. After receiving public comments, FWS will have 45 days to issue a Final Biological Opinion.

# DPR's Position

- DPR looks forward to provide expertise in the "fine tuning" of the biological opinions resulting from the consultations on the 66 active ingredients and California Red-legged frog.
- As U.S. EPA officials inform DPR of their actions, DPR will make that information available through our Web site: http://www.cdpr.ca.gov
- DPR has posted CRLF habitat information and Injunction/Order requirements on its Web site, and will update stakeholders of any developments that might occur.

## Web sites related to this topic

- Stipulated Injunction and Order Information posted on U.S. EPA's Web site:

http://www.epa.gov/oppfead1/endanger/stipulated-injunction.htm

- U.S. EPA's website with maps of counties affected by the injunction:

http://www.epa.gov/espp/litstatus/redleg-frog/steps-info.htm