FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LEAGUE OF UNITED LATIN AMERICAN CITIZENS; PESTICIDE ACTION NETWORK NORTH AMERICA; NATURAL RESOURCES DEFENSE COUNCIL; CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION; FARMWORKERS ASSOCIATION OF FLORIDA; FARMWORKER JUSTICE GREENLATINOS; LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT; LEARNING DISABILITIES ASSOCIATION OF AMERICA; NATIONAL HISPANIC MEDICAL ASSOCIATION; PINEROS Y CAMPESINOS UNIDOS DEL NOROESTE; UNITED FARM WORKERS, *Petitioners,* STATE OF NEW YORK; STATE OF MARYLAND; STATE OF VERMONT; STATE OF WASHINGTON; COMMONWEALTH OF MASSACHUSETTS; DISTRICT OF COLUMBIA; STATE OF CALIFORNIA; STATE OF HAWAII, *Intervenors,*	No. 17-71636 ORDER

v.

ANDREW WHEELER, Acting Administrator of United States Environmental Protection Agency; U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

On Petition for Review of an Order of the Environmental Protection Agency

Argued and Submitted En Banc March 26, 2019
San Francisco, California

Filed April 19, 2019

Before: Sidney R. Thomas, Chief Judge, and M. Margaret McKeown, Kim McLane Wardlaw, Richard A. Paez, Carlos T. Bea, Morgan Christen, Jacqueline H. Nguyen, Paul J. Watford, John B. Owens, Michelle T. Friedland, and Mark J. Bennett, Circuit Judges

Order

SUMMARY*

Mandamus / Environmental Protection Agency

The en banc court construed the League of United Latin American Citizens (LULAC)'s opening brief as a request for mandamus relief, and granted the petition for a writ of mandamus. The en banc court ordered the Environmental Protection Agency to issue, no later than 90 days after the filing of this order, a full and fair decision on LULAC's objections to an EPA order denying a 2007 petition to cancel all tolerances for the pesticide chlorpyrifos, pursuant to 21 U.S.C. § 346a(g)(2)(C).

COUNSEL

Patti A. Goldman (argued), Marisa C. Ordonia, and Kristen L. Boyles, Earthjustice, Seattle, Washington, for Petitioners.

Andrea Oser (argued), Deputy Solicitor General; Frederick A. Brodie, Assistant Solicitor General of Counsel; Barbara D. Underwood, Solicitor General; Office of the Attorney General, Albany, New York;

Brian E. Frosh, Attorney General; Steven M. Sullivan, Solicitor General; Office of the Attorney General, Baltimore, Maryland; Thomas J. Donovan Jr., Attorney General; Nicholas F. Persampieri, Assistant Attorney General; Office of the Attorney General, Montpelier, Vermont; Robert W.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Ferguson, Attorney General; William R. Sherman, Counsel for Environmental Protection; Attorney General's Office, Seattle, Washington; Maura Healey, Attorney General; I. Andrew Goldberg, Assistant Attorney General; Environmental Protection Division, Office of the Attorney General, Boston, Massachusetts; Karl A. Racine, Attorney General; Brian R. Caldwell, Assistant Attorney General; Office of the Attorney General, Washington, D.C.; Xavier Becerra, Attorney General; Susan S. Fiering, Supervising Deputy Attorney General; Reed Sato, Deputy Attorney General; Office of the Attorney General, Sacramento, California; Russell A. Suzuki, Acting Attorney General; Wade H. Hargrove III, Deputy Attorney General; Ewan C. Rayner, Deputy Solicitor General; Department of the Attorney General, Honolulu, Hawaii; for Intervenors.

Jonathan Brightbill, Deputy Assistant Attorney General; Erica M. Zilioli, and Phillip R. Dupré, Attorneys; Jeffrey H. Wood, Acting Assistant Attorney General; Environment and Natural Resources Division, United States Department of Justice, Washington, D.C.; Mark Dyner, Office of the General Counsel, United States Environmental Protection Agency, Washington, D.C.; for Respondents.

Donald C. McLean, Sylvia G. Costelloe, Kathleen R. Heilman, and Stanley H. Abramson, Arent Fox LLP, Washington, D.C.; Christopher Landau P.C. and Archith Ramkumar, Quinn Emanuel Urquhart & Sullivan LLP, Washington, D.C.; for Amicus Curiae Dow Agrosciences LLC.

Susan J. Kraham and Edward Lloyd, Attorneys; Tess Dernbach, and Laura Keeley, Legal Interns; Morningside Heights Legal Services, Columbia Environmental Clinic,

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Shaun A. Goho, Emmett Environmental Law & Policy Clinic, Harvard Law School, Cambridge, Massachusetts, for Amici Curiae Health Professional Organizations.

David Y. Chung, Elizabeth B. Dawson, and Kristen L. Nathanson, Crowell & Moring LLP, Washington, D.C., for Amici Curiae Agribusiness Council of Indiana, Agricultural Retailers Association, Almond Alliance of California, American Farm Bureau Federation, AmericanHort, American Seed Trade Association, American Soybean Association, American Sugarbeet Growers Association, Beet Sugar Development Foundation, California Alfalfa & Forage Association, California Citrus Mutual, California Cotton Ginners and Growers Association, California Fresh Fruit Association, California Specialty Crops Council, Cranberry Institute, Minnesota Soybean Growers Association, National Agricultural Aviation Association, National Association of Wheat Growers, National Corn Growers Association, National Cotton Council, National Sorghum Producers, Northwest Horticultural Council, Oregonians for Food & Shelter, Washington Friends of Farms & Forests, Western Agricultural Processors Association, Western Growers, Western Plant Health Association, and Wyoming Agricultural Business Association.

Kathryn E. Szmuszkovicz and Andrew C. Stilton, Beveridge & Diamond P.C., Washington, D.C.; Doreen Manchester, Deputy General Counsel; Rachel Lattimore, Sr. Vice President & General Counsel; CropLife America, Washington, D.C.; for Amicus Curiae CropLife America.

ORDER

In its opening brief, the League of United Latin American Citizens (LULAC)[1] requested, as alternative relief, the issuance of a Writ of Mandamus. The Environmental Protection Agency (EPA) conceded at oral argument that we may consider LULAC's request as a Petition for a Writ of Mandamus, and it had a full opportunity to respond. In view of the circumstances presented by the petition, we exercise our discretion to construe the opening brief as a request for mandamus relief. *See Pub. Utils. Comm'n v. FERC*, 814 F.2d 560, 562 (9th Cir. 1987) (construing premature petition for review as request for mandamus relief).

Considering the history and chronology of this matter and the nature of the claims, we conclude mandamus is appropriate, and we hereby **GRANT** the Petition for a Writ of Mandamus. *See Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 79–80 (D.C. Cir. 1984) (laying out criteria for mandamus relief); *see also In re PANNA*, 798 F.3d 809, 813–14 (9th Cir. 2015) (applying the "*TRAC* factors" in earlier litigation related to this case).

At oral argument, EPA represented that it could issue a final decision with respect to petitioners' objections within 90 days of an order issued by this court. EPA is hereby ordered to issue, no later than 90 days after the filing of this order, a full and final decision on LULAC's objections pursuant to 21 U.S.C. § 346a(g)(2)(C). Given this resolution, we need not–and do not–decide any other issue urged by the

[1] Throughout this order, LULAC also refers to the Intervenors, and the remedy granted is equally applicable to the Intervenors.

parties. The en banc court shall retain jurisdiction over this and any related cases.

PETITION GRANTED.