

1 Justin Augustine (CA Bar No. 235561)  
Jaelyn Lopez (CA Bar No. 258589)  
2 Center for Biological Diversity  
351 California Street, Suite 600  
3 San Francisco, CA 94104  
Phone: (415) 436-9682; Fax: (415) 436-9683  
4 jaugustine@biologicaldiversity.org  
jlopez@biologicaldiversity.org

5 Collette L. Adkins Giese (MN Bar No. 035059X)\*  
6 Center for Biological Diversity  
8640 Coral Sea Street Northeast  
7 Minneapolis, MN 55449-5600  
Phone: (651) 955-3821; Fax: (415) 436-9683  
8 cadkinsgiese@biologicaldiversity.org

9 Michael W. Graf (CA Bar No. 136172)  
Law Offices  
227 Behrens Street  
10 El Cerrito, CA 94530  
Phone: (510) 525-7222; Fax: (510) 525-1208  
11 mwgraf@aol.com

12 *Attorneys for Plaintiffs*

13 \*Granted admission *pro hac vice*

14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION  
17

18 **CENTER FOR BIOLOGICAL** )  
**DIVERSITY**, a non-profit organization; and )  
19 **PESTICIDE ACTION NETWORK** )  
**NORTH AMERICA**, a non-profit )  
20 organization; )

21 Plaintiffs, )

22 v. )

23 **ENVIRONMENTAL PROTECTION** )  
**AGENCY**; and **GINA McCARTHY**, )  
Administrator, U.S. EPA; )

24 Defendants, )

25 and )

26 **CROPLIFE AMERICA**, *et al.*, )

27 Intervenor-Defendants. )

Case No. 3:11-cv-00293-JCS

**PLAINTIFFS' OPPOSITION TO  
CROPLIFE'S MOTION FOR MORE  
DEFINITE STATEMENT**

Date: October 4, 2013

Time: 1:30 P.M.

Location: Courtroom G, 15<sup>th</sup> Floor

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## **INTRODUCTION**

1  
2 Plaintiffs the Center for Biological and Pesticide Action Network North America (collectively,  
3 “the Center”) respectfully oppose the Motion for More Definite Statement filed by Intervenor-  
4 Defendants (collectively, “CropLife”). Docket No. 169. Because many of the arguments raised by  
5 CropLife duplicate those of the Federal Defendants, Plaintiffs focus on the new arguments here and  
6 otherwise rely upon their brief filed in opposition to the Federal Defendants’ motion.<sup>1</sup> Docket No. 171.

7 In their motion, CropLife repeatedly mischaracterizes the Amended Complaint, which identifies  
8 specific affirmative agency actions for every failure to consult claim, as well as specific triggers for  
9 every reinitiation claim. CropLife’s motion emphasizes legal issues, such as jurisdiction, that should  
10 instead be raised in a motion to dismiss or otherwise resolved on the merits, and their arguments  
11 demonstrate that they have notice of the claims against them and can prepare a response to the  
12 Amended Complaint. CropLife demands details that are not appropriately sought through a motion for  
13 more definite statement and are not required at the pleading stage, such as identification of specific  
14 documents backing the facts alleged. For all these reasons, as further discussed below, Plaintiffs ask  
15 the Court to deny the motion.

## **BACKGROUND**

16  
17  
18 On January 20, 2011, the Center filed this lawsuit seeking to require the U.S. Environmental  
19 Protection Agency (“EPA”) to protect endangered animals from toxic pesticides through consultation  
20 with expert wildlife agencies under the Endangered Species Act (“ESA”). After nearly two years of  
21 settlement negotiation, the Federal Defendants called off the discussions, and along with CropLife,  
22 moved to dismiss the Complaint under Rule 12(b)(6) and Rule 12(b)(1) of the Federal Rules of Civil  
23 Procedure. Docket Nos. 137 & 139. On April 22, 2013, the Court dismissed the Center’s Complaint  
24 with leave to amend. Docket No. 157.

25  
26  
27 <sup>1</sup> Because CropLife filed the present motion just two days before Plaintiffs’ Opposition to Federal  
28 Defendants’ motion was due, Plaintiffs were unable to file a combined brief in opposition to both  
motions.

1 On June 5, 2013, after receiving a two-week extension, the Center filed its Amended Complaint,  
2 which narrows the number of pesticides and species in the lawsuit. Docket No. 160. Federal  
3 Defendants and CropLife sought a 120-day extension of the responsive pleading deadline. Docket No.  
4 163 & 165. On June 24, 2013, the Court granted them a 90-day extension, setting a September 18,  
5 2013 deadline. Docket No. 167. Nearly two months later, Federal Defendants filed a Motion for More  
6 Definite Statement, Docket No. 168, and then twelve days later, CropLife filed the present motion.  
7 Docket No. 169.

### 8 LEGAL STANDARD

9 Federal Rule of Civil Procedure 12(e) provides that a party may move for a more definite  
10 statement of a pleading that is “so vague or ambiguous that the party cannot reasonably prepare a  
11 response.” Fed. R. Civ. P. 12(e). Such a motion “must be considered in light of the liberal pleading  
12 standards set forth in Rule 8(a)(2).” *Comm. for Immigrant Rights of Sonoma County v. County of*  
13 *Sonoma*, 644 F. Supp. 2d 1177, 1191 (N.D. Cal. 2009). Rule 8 requires only “sufficient allegations to  
14 put defendants fairly on notice of the claims against them.” *McKeever v. Block*, 932 F.2d 795, 798 (9th  
15 Cir. 1991). Thus, “the proper test in evaluating a Rule 12(e) motion is whether the complaint provides  
16 the defendant with a sufficient basis to frame his responsive pleadings.” *Fed. Sav. & Loan Ins. Corp. v.*  
17 *Musacchio*, 695 F. Supp. 1053, 1060 (N.D. Cal. 1988).

18 “Rule 12(e) motions are viewed with disfavor and are rarely granted . . . .” *Velasquez v. HSBC*  
19 *Fin. Corp.*, No. 08-4592 SC, 2009 U.S. Dist. LEXIS 5428, \*3 (N.D. Cal. Jan. 16, 2009); *see, e.g.,*  
20 *United States Capital v. AHMSA Int’l, Inc.*, No. 12-6520 JSC, 2013 U.S. Dist. LEXIS 20245, \*17 (N.D.  
21 Cal. Feb. 14, 2013) (“The questions posed by Defendant in its motion are the proper subjects for  
22 discovery and are not necessary to answer the Complaint.”); *Ally Bank v. Castle*, No. 11-CV-896 YGR,  
23 2013 U.S. Dist. LEXIS 1631, \*17 (N.D. Cal. Jan. 4, 2013) (“[T]he Court finds that the allegations are  
24 not so indefinite as to preclude Gallagher from understanding which allegations are directed at him and  
25 the conduct upon which the claims are based.”); *Rodriguez v. Serv. Emp. Int’l*, 755 F. Supp. 2d 1033,  
26 1054 (N.D. Cal. 2010) (Spero, M.J.) (“Pursuant to Rule 12(e), [a] party may move for a more definite  
27 statement of a pleading . . . which is so vague or ambiguous that the party cannot reasonably prepare a  
28

1 response.’ That standard is not met here.”). “A motion for more definite statement attacks  
2 intelligibility, not simply lack of detail.” *Gregory Village Partners v. Chevron, USA*, 805 F. Supp. 2d  
3 888, 896 (N.D. Cal. 2011).

## 4 ARGUMENT

### 5 **I. The Failure To Consult Claims Provide Notice By Specifically Identifying Affirmative** 6 **Actions For Each Pesticide**

7 As the Amended Complaint demonstrates, Plaintiffs identify the relevant affirmative agency  
8 actions for each pesticide. CropLife argues that Plaintiffs fail to specify “which act or acts allegedly  
9 triggers a duty to consult, or why,” Docket No. 169 at 4, and targets 1,3-dichloropropene as an  
10 example. Plaintiffs have already systematically addressed the allegations underlying their failure to  
11 consult claims using the trifluralin example that Federal Defendants have targeted in their motion.  
12 Docket No. 171 at 3-10 (Plaintiffs’ Opposition). This analysis is relevant to 1,3-dichloropropene, and  
13 the remaining failure to consult claims as well, because the Amended Complaint presents allegations  
14 for these claims using one consistent framework that is adapted for each of the pesticides at issue.  
15 Plaintiffs avoid repeating arguments already addressed in their response to the Federal Defendants’  
16 motion and instead focus below on CropLife’s additional arguments.

17 CropLife argues that “the Amended Complaint never indicates how or why Plaintiffs believe  
18 any of these acts triggered a duty to consult under the ESA—let alone whether those claims are  
19 governed by FIFRA § 16(a) or § 16(b).” Docket No. 169 at 4-5. That is false. Because the duty to  
20 consult applies to “all actions in which there is discretionary Federal involvement or control,” 50 C.F.R.  
21 § 402.03, the Amended Complaint identifies the actions underlying the failure to consult claims and the  
22 EPA’s discretionary involvement or control over the actions. For example, paragraphs 119 to 123  
23 address the EPA’s failure to consult on the product reregistrations for 1,3-dichloropropene. Am.  
24 Compl. ¶¶ 119-123. In paragraphs 119 to 121, Plaintiffs provide details on the EPA’s product  
25 reregistrations for 1,3-dichloropropene, including the dates that EPA completed product reregistration  
26 for that pesticide and the dates that EPA reregistered all the individual products containing 1,3-  
27 dichloropropene. *Id.* ¶¶ 119-121. Then, in paragraph 122, Plaintiffs give details on EPA’s  
28

1 discretionary involvement and control over these actions, explaining that these product registrations can  
2 be altered to benefit endangered species. *Id.* ¶ 122. Plaintiffs next unambiguously allege that “the  
3 registration of products containing 1,3-dichloropropene constitute additional ‘affirmative agency  
4 actions’ subject to consultation under Section 7(a)(2) of the ESA.” *Id.* Following that, in paragraph  
5 123, Plaintiffs allege facts sufficient to show that the Court has jurisdiction: “EPA’s registration of  
6 products containing 1,3-dichloropropene are final actions that do not follow a hearing, which are  
7 therefore judicially reviewable by the district court under FIFRA § 16(a), 7 § U.S.C. 136n(a), as well as  
8 under the ESA’s citizen suit provision, 16 U.S.C. § 1540(g).” *Id.* ¶ 123.

9 Thus, CropLife is wrong to argue that the Amended Complaint does not indicate how “any of  
10 these acts” trigger a duty to consult. Indeed, for every failure to consult claim, the Amended Complaint  
11 specifically identifies the most recent Reregistration Eligibility Decision (“RED”) and the completion  
12 of product reregistration as affirmative agency actions and alleges facts showing that the EPA retains  
13 discretionary involvement and control over these actions and that the Court has jurisdiction.

14 In addition, Plaintiffs provided for each pesticide a list of “subsequent actions” primarily to  
15 demonstrate that EPA retained discretionary control and involvement over the pesticide registration,  
16 which is needed to establish “ongoing agency action.” *See, e.g.*, Am. Compl. ¶ 116. For example, for  
17 1,3-dichloropropene, the Amended Complaint explains that “EPA has retained discretionary control  
18 and involvement over this pesticide through the subsequent actions identified immediately below, as  
19 well as others which are summarized on these webpages maintained by EPA . . . .” *Id.* ¶ 115. The  
20 Amended Complaint then lists two such “subsequent actions” in addition to the product reregistrations.  
21 *Id.* ¶117 (“In April of 2010, EPA issued “Soil Fumigant Risk Assessments.”); *id.* ¶ 118 (“In 2008, EPA  
22 issued an Updated RED Fact Sheet for 1,3-dichloropropene, which includes additional mitigation  
23 measures beyond those in the 1998 RED.”).

24 CropLife appears particularly concerned that all of these “subsequent actions” may be relied  
25 upon by Plaintiffs as triggers for the duty to consult, arguing that some of the actions are not yet final or  
26 are outside the jurisdiction of the Court. Docket No. 169 at 4-5. Such concerns, however, can be  
27 addressed in a motion to dismiss. Additionally, as explained in Plaintiffs’ Opposition to Federal  
28

1 Defendants' Motion (Docket No. 171 at 12), nothing prohibits Plaintiffs from relying on a variety of  
2 agency actions in the Amended Complaint. It is well established that plaintiffs may plead alternative  
3 legal theories and that Rule 12(e) cannot be used to tie plaintiffs to a particular legal theory in the  
4 complaint. *See, e.g.*, 5C Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ. § 1377 (3d  
5 ed. 2008) ("Moreover, any attempt to use a Rule 12(e) motion for a more definite statement to tie the  
6 pleader down to a particular legal theory of the case will be rejected as contrary to the philosophy of the  
7 federal rules, which does not require the claimant to settle upon a theory of his case at the pleading  
8 stage.").

9 Furthermore, CropLife repeatedly mischaracterizes the Amended Complaint's treatment of  
10 these "subsequent actions." For example, in the discussion of dicamba, CropLife asserts: "Indeed,  
11 Plaintiffs even cite as triggering consultation a one page memorandum 'correct[ing] a typographical  
12 error' in the dicamba RED. *See* Am. Compl. ¶ 377." Docket No. 169 at 5. But actually, the Amended  
13 Complaint lists the following EPA action in paragraph 377: "In October of 2008 and June of 2009,  
14 EPA issued amended and corrected REDs for dicamba and salts." Am. Compl. ¶ 377. Nowhere does  
15 the Amended Complaint state that the June 2009 RED correction by itself would trigger the duty to  
16 consult. Rather, for completeness and accuracy, the Amended Complaint references the amended RED  
17 issued in October of 2008 – which included substantive amendments to the RED issued in June of 2006  
18 – along with the corrected RED issued in June of 2009.

19 CropLife exaggerates its concerns regarding the Amended Complaint's citation to EPA  
20 webpages. CropLife suggests that it is "impossible" to know whether to look for the actions under the  
21 tabs for "Regulatory Actions," "Science Reviews," "Chemical Details," "Emergency Exemptions," or  
22 "Dockets." Docket No. 169 at 6-7. Yet these webpages are self-explanatory and easily navigated.  
23 Indeed, it strains credibility for CropLife to pretend to be unaware that EPA's actions can be found  
24 under the "Regulatory Actions" tab. Regardless, Plaintiffs acknowledge that referencing a webpage is  
25 not an ideal way to allege facts, so the key actions upon which Plaintiffs base their consultation claims  
26 are already specifically identified with dates in the Amended Complaint. Plaintiffs included the  
27 additional webpages because they are the source of that information and provide a comprehensive list  
28



1 of all the actions taken by EPA, demonstrating the extent of the agency's ongoing involvement and  
2 control over the registrations.

3 CropLife also expresses concern about the EPA's Pesticide Product Label System webpage,  
4 which Plaintiffs reference for additional information on the product reregistrations. Plaintiffs  
5 acknowledge that this website is not searchable by active ingredient, but Plaintiffs have not had the  
6 benefit of discovery and therefore have relied upon this publically available source of information on  
7 EPA's product reregistrations. Importantly, however, the Amended Complaint already provides the  
8 date that EPA completed product reregistration for every pesticide subject to a failure to consult claim.  
9 In addition, for more than half of the pesticides, Plaintiffs provided additional details on the product  
10 reregistrations including Product Name, Approved Date, and Registration Number. *See, e.g.,* Am.  
11 Compl. ¶ 751 (providing this information for the products containing thiobencarb). For dicamba and 14  
12 other pesticides that have dozens of currently registered products, however, it was more practical to  
13 reference the EPA's website (rather than individually list all the product reregistrations in the Amended  
14 Complaint).

15 Although Federal Defendants do not raise any concerns with Exhibit B, CropLife argues that it  
16 is missing details. Exhibit B is one of several sources that Plaintiffs rely upon to allege that the  
17 pesticides "may affect" certain species. Specifically, Exhibit B summarizes one source of data on  
18 species exposure to pesticides. As the Amended Complaint explains:

19 In addition, USGS [United States Geological Survey] has identified many of the  
20 pesticides in this lawsuit (or their degradates) in watersheds that are within the ranges of  
21 species that may be affected by that pesticide, as shown in Exhibit B. Watersheds within  
22 the range of each species were identified using the NatureServe database. Toxicity was  
determined for the taxonomic group of each species as discussed above.

23 Am. Compl. ¶ 99. Then, in each of the relevant pesticide-specific sections, the Amended Complaint  
24 explains that the USGS data shows that the pesticide has contaminated watersheds and that some of  
25 these watersheds overlap the range of species that may be affected by the pesticide. *See, e.g.,* Am.  
26 Compl. ¶ 137 ("The USGS has detected 2,4-D, salts and esters in dozens of watersheds across the  
27 nation, as documented in reports on its nationwide water quality surveys. As shown in Exhibit B, some  
28 of these watersheds overlap the range of species that may be affected by this pesticide."). CropLife

1 asks for details about the levels at which the pesticides were detected and what species were found in  
2 the watersheds. Yet a Rule 12(e) motion cannot be used to seek such details. *See Griffin v. Cedar Fair,*  
3 *L.P.*, 817 F. Supp. 2d 1152, 1156 (N.D. Cal. 2011) (“The rule is aimed at unintelligibility rather than  
4 lack of detail and is only appropriate when the defendants cannot understand the substance of the claim  
5 asserted.”). CropLife does not explain why such details would be necessary to respond to the Amended  
6 Complaint. At bottom, CropLife seems to be attacking the sufficiency of Plaintiffs’ allegations in  
7 meeting the “may affect” threshold, but such arguments are appropriate at the merits stage of this case  
8 and do not justify a more definite statement.

9 In short, the Amended Complaint gives Federal Defendants and CropLife notice of Plaintiffs’  
10 claims by identifying affirmative agency actions that give rise to each failure to consult claim. The  
11 details sought by CropLife are either already provided in the Amended Complaint or not required.

## 12 **II. The Failure to Reinitiate Consultation Claims Provide Notice By Specifically Identifying** 13 **The Triggers For Reinitiation**

14 The Amended Complaint provides detailed allegations that establish the specific triggers for  
15 EPA’s duty to reinitiate consultation. CropLife’s arguments attacking Plaintiffs’ reinitiation claims  
16 again largely rely on mischaracterizations of the Amended Complaint.

17 Under the ESA’s consultation regulations, one of the triggers for reinitiation is “if a new species  
18 is listed or critical habitat designated that may be affected by the identified action.” 50 C.F.R. §  
19 402.16(d). As such, for each of the reinitiation claims, the Amended Complaint identifies species  
20 listings and critical habitat designations that have occurred since the 1989 and 1993 biological opinions  
21 that may be affected by the relevant pesticide. *See, e.g.*, Am. Compl. ¶ 808. CropLife argues that  
22 Plaintiffs fail to make “any allegations as to how any of the species could be impacted by the active  
23 ingredient.” Docket No. 169 at 10. This is not true. The Amended Complaint provides several  
24 paragraphs of allegations that establish “may affect” for the pesticide and species combinations  
25 identified in Exhibit A and relied upon in the pesticide-specific sections for the reinitiation claims. Am.  
26 Compl. ¶¶ 95-100. For example, the Amended Complaint states that “Federal agency documents or  
27 peer-reviewed journal articles document pesticide impacts on these species,” *id.* ¶ 98, and that the  
28 “[c]ombinations of pesticides and species reflect pesticides known to be harmful to the taxonomic

1 group of that species and used in the state where that species lives,” *id.* ¶ 100. Then, later in the  
2 Amended Complaint, in the pesticide-specific sections for the reinitiation claims, additional allegations  
3 regarding how the pesticide impacts the endangered species are provided. For example, for 2,4-D (the  
4 first pesticide included in the reinitiation claims), the Amended Complaint includes several additional  
5 paragraphs establishing harm from that pesticide to endangered species, including, among other things,  
6 information from the 2,4-D RED discussing risks to endangered species, toxicity rankings for various  
7 taxonomic groups based on LD50 or LC50 data found in one of several databases, and USGS data that  
8 establishes the pesticide’s potential exposure to endangered species and their habitats. *Id.* ¶¶ 801-805.

9 Another trigger for consultation is “if new information reveals effects of the action that may  
10 affect listed species or critical habitat in a manner or to an extent not previously considered.” 50 C.F.R.  
11 § 402.16(b). Relying upon this trigger, the Amended Complaint’s section on 2,4-D, for example,  
12 includes allegations that focus on new information on endangered species impacts that has become  
13 available after the 1989 Biological Opinion. Am. Compl. ¶¶ 801-807. Among other things, the  
14 Amended Complaint points to a 2009 study that revealed new information on how 2,4-D and other  
15 herbicides can impact amphibian populations, Am. Compl. ¶ 807, and explains that “2,4-D is also now  
16 known to be ‘highly acutely toxic’ or ‘very highly acutely toxic’ to the following taxonomic groups:  
17 mammals, birds, fish, amphibians, crustaceans, and reptiles . . . based on LD50 or LC50 data (lethal  
18 dose to 50 percent of the test organisms or lethal concentration for 50 percent of the test organisms) in  
19 one or more of three databases that the EPA maintains: AQUIRE, Terretox, and the EPA database of  
20 ecotoxicity studies used in registration decisions.” Am. Compl. ¶ 803.

21 CropLife complains that the “Amended Complaint never specifies which documents within the  
22 EPA databases Plaintiffs believe contain pertinent new information.” Docket No. 169 at 10. But  
23 actually, the Amended Complaint refers to the “LD50 or LC50 data” contained in these databases.  
24 Moreover, no rule requires Plaintiffs to identify each and every document supporting their factual  
25 allegations in the Amended Complaint, and such arguments cannot justify a more definite statement.  
26 *See* 2-12 Moore’s Federal Practice - Civil § 12.36[1] (“Courts frown on a litigant’s use of the motion as  
27 a ‘shotgun tactic’ to substitute for discovery, or as a dilatory tactic to postpone filing an answer. In the  
28

1 presence of proper, although general, allegations, the motion will usually be denied on the grounds that  
2 discovery is the more appropriate vehicle for obtaining the detailed information.”).<sup>2</sup>

3 Similarly, despite the Amended Complaint’s detailed allegations that establish triggers for  
4 reinitiation, CropLife argues: “Plaintiffs never actually identify which specific events or pieces of  
5 information, among the hundreds listed or referenced, are the alleged reinitiation trigger.” Docket No.  
6 169 at 10. But the Amended Complaint systematically identifies the triggers and then summarizes that  
7 information in a concluding paragraph for each pesticide. The Amended Complaint’s allegations on  
8 2,4-D provide a representative example. After several paragraphs identifying the new information and  
9 new listings or critical habitat designations, the Amended Complaint states:

10 The above information reveals that triggers for reinitiation of formal consultation have  
11 occurred in regard to 2,4-D. This information shows that 2,4-D may affect listed species  
12 or their critical habitat in a manner or to an extent not previously considered, and that  
13 new species have been listed or critical habitat designated that may be affected by 2,4-D.  
For example, there are new studies, new information on toxicity and presence in  
watersheds, and new information regarding the extent of use.

14 Am. Compl. ¶ 809. Additional specificity is not required.

15 CropLife also argues that “the Amended Complaint does not cite or acknowledge work EPA has  
16 done to complete certain effects determinations and consult with the Services.” Docket No. 169 at 11.  
17 Yet the Amended Complaint states that it does not include pesticide and species combinations for  
18 which EPA has already begun consultation. Am. Compl. ¶ 101 (“This lawsuit does not cover  
19 combinations of pesticides and species for which effect determinations and ESA Section 7  
20 consultations are already in progress, unless such consultations are geographically restricted, in which  
21 case this lawsuit includes those geographic areas not already covered by these consultations.”). In any  
22 event, if CropLife has evidence that some claims may have been somehow mooted by EPA’s  
23 subsequent actions, then they can raise those arguments in a motion to dismiss.

24 \_\_\_\_\_  
25 <sup>2</sup> CropLife further complains that the “AQUIRE” and “TERRETOX” databases “no longer exist as  
26 separate databases.” This assertion is meaningless, however, because the databases exist, and that is  
27 what matters. As for the third database, which CropLife refers to as an “unspecified” database, the  
28 Amended Complaint calls it exactly what it is: “the EPA database of ecotoxicity studies.” *See, e.g.,* U.S.  
EPA, *Environmental Databases*, [http://www.epa.gov/pesticides/science/efed\\_databasesdescription.htm](http://www.epa.gov/pesticides/science/efed_databasesdescription.htm)  
(stating that the EPA “Ecotoxicity Database contains ecotoxicity studies”).

1 The Amended Complaint identifies numerous triggers for reinitiation of consultation, which is  
2 not surprising given that decades have passed since the 1989 and 1993 biological opinions. The relevant  
3 question here is whether Federal Defendants and CropLife have notice of the reinitiation claims, which  
4 the Amended Complaint ensures by identifying (and then summarizing) the information establishing the  
5 triggers for each pesticide.

### 6 **III. The Standing Allegations Do Not Need Clarification With A More Definite Statement**

7 To comply with the Court's Dismissal Order, Plaintiffs have "allege[d] facts supporting  
8 standing for each individual claim." Docket No. 157 at 18 (Dismissal Order). To be sure, Plaintiffs  
9 provide nine paragraphs of standing allegations for each claim in the Amended Complaint. *See, e.g.*,  
10 Am. Comp. ¶¶ 778-86 (standing allegations for trifluralin).

11 CropLife points to allegations about a Center member's interests in the bonytail chub to argue  
12 that Plaintiffs lack standing to bring their reinitiation claim for dicamba. *See* Docket No. 169 at 12-13.  
13 As an initial matter, the bonytail chub is just an example that is given in support of Plaintiffs' general  
14 allegations of standing. Am. Compl. ¶ 1090 ("For example, the bonytail chub was part of the 1989  
15 BiOp, and a member of Plaintiffs' organizations has a cognizable interest in this species based on,  
16 among other things, efforts to observe the species during frequent visits to habitats where the species  
17 can be found and may be affected by dicamba.") (emphasis added). In addition, as the Amended  
18 Complaint alleges, dicamba has been found to be "'highly acutely toxic' or 'very highly acutely toxic'"  
19 to fish, so the bonytail chub (a fish) actually is an appropriate example. Am. Compl. ¶ 1084. It is  
20 irrelevant that the 1989 Biological Opinion did not identify dicamba as impacting the bonytail chub. In  
21 fact, CropLife's arguments help show why reinitiation of consultation is required on dicamba. With  
22 reinitiation of consultation, new information regarding dicamba's impacts, including information on  
23 dicamba's toxicity to fish, can now be considered through consultation with the expert wildlife agency.

24 Similarly, CropLife misconstrues the standing allegations for the reinitiation claim on aldicarb,  
25 which points to injury to the Higgins eye pearl mussel as just one example. *See* Am. Compl. ¶ 844.  
26 That the USGS study did not detect aldicarb in watersheds within the range of the mussel is not  
27 dispositive. Plaintiffs do not solely rely on the USGS study to establish pesticide exposure to the  
28

1 species. As the Amended Complaint alleges, the combinations of pesticides and species in Exhibit A  
2 reflect pesticide exposure, specifically, that the pesticide is “used in the state where that species lives.”  
3 Am. Compl. ¶ 100. Plaintiffs will prove this allegation with documents and expert analysis at the  
4 appropriate stage in the litigation.

5 In summary, the Amended Complaint gives Federal Defendants and CropLife notice of  
6 Plaintiffs’ failure to consult claims by identifying the affirmative agency actions for each pesticide.  
7 Similarly, the Amended Complaint provides detailed allegations identifying the triggers for their  
8 reinitiation claims. CropLife’s arguments challenging the Center’s standing can be presented through a  
9 motion to dismiss but do not justify a more definite statement. Thus, the Court should deny CropLife’s  
10 motion.

11 **CONCLUSION**

12 For all these reasons, the Center respectfully requests that the Court deny CropLife’s motion for  
13 a more definite statement.  
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15 Respectfully submitted this 10th day of September, 2013,  
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17 /s/ Collette L. Adkins Giese

18 Collette L. Adkins Giese (MN Bar No. 035059X)\*  
19 Center for Biological Diversity  
20 8640 Coral Sea Street Northeast  
21 Minneapolis, MN 55449-5600  
22 Phone: (651) 955-3821  
23 Fax: (415) 436-9683  
24 cadkinsgiese@biologicaldiversity.org

25 Justin Augustine (CA Bar No. 235561)  
26 Jaclyn Lopez (CA Bar No. 258589)  
27 Center for Biological Diversity  
28 351 California Street, Suite 600  
San Francisco, CA 94104  
Phone: (415) 436-9682  
Fax: (415) 436-9683  
jaugustine@biologicaldiversity.org  
jlopez@biologicaldiversity.org

Michael W. Graf (CA Bar No. 136172)  
Law Offices  
227 Behrens Street  
El Cerrito, CA 94530

Phone: (510) 525-7222  
Fax: (510) 525-1208  
mwgraf@aol.com

*Attorneys for Plaintiffs*

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