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Wildlife Advocates Claim A Victory in Fight Against Toxic Rat Poison in California

Court Rules that California Department of Pesticide Regulation Must Comply with Environmental Regulations When Renewing Rodenticide

BERKELEY, CA (September 28, 2022)— Yesterday, California's First District Court of Appeal recognized the danger posed by the deadly rodenticide diphacinone in ruling that the California Department of Pesticide Regulation must fully consider evidence before it of the poison's impacts on non-target wildlife, both on its own and in conjunction with other poisons, when the department renews registration of this product each year.

"The recent deaths of several mountain lions in Southern California from impacts related to anticoagulant rat poisons including diphacinone highlight the importance and timeliness of this decision," said Lisa Owens Viani, Director of Raptors Are The Solution, a project of Berkeley-based Earth Island Institute and the plaintiff in the case. "The court recognized the danger to wildlife from diphacinone and in particular its cumulative impacts when used in addition to multiple other anticoagulants."

The Stanford Environmental Law Clinic and Law Offices of Michael Graf represented Raptors Are The Solution in this appeal, which challenged a 2020 decision by the Alameda County Superior Court that the department had met the requirements of the California Environmental Quality Act (CEQA) when it decided to reevaluate second-generation anticoagulant rodenticides (SGARs) but refused to reevaluate the equally toxic first-generation anticoagulant diphacinone.

The First District reversed the trial court's ruling with instructions to the department to go back to the drawing board to do a full analysis of diphacinone and its impacts, in compliance with CEQA. The decision confirmed that the department had committed multiple legal errors under CEQA in refusing to reevaluate diphacinone by distorting the record and improperly minimizing evidence of adverse effects of diphacinone – the second-most toxic and commonly used anticoagulant rodenticide.

“Yesterday’s decision makes clear that CEQA’s protections apply when the California Department of Pesticide Regulation considers whether to reevaluate a pesticide like diphacinone as part of its annual pesticide renewal decisions,” said co-counsel Michael Graf, who filed the lawsuit in 2018. “The decision will ensure that the department considers a pesticide’s cumulative effects in deciding whether or not to reevaluate the pesticide’s registration, which is a critical ruling that will help to protect wildlife in California.”

Alana Reynolds, a certified law student with the Stanford Environmental Law Clinic who argued the case in the First District, said of the court’s decision: “Yesterday’s decision is a win for informed governmental decision-making and rational treatment of science that sounds environmental alarm bells. It has been an honor to work on a case that fought to protect ecosystems from serious harm and ensures that the department take a hard look at sound science indicating that severe environmental impacts are occurring.”

“The court’s decision not only protects our state’s bobcats, owls, and other wildlife but also upholds the basic integrity of CEQA,” said Samuel Wallace-Perdomo, a certified law student with the Stanford Environmental Law Clinic who co-authored briefing on the appeal. “The decision vindicates the basic obligation guaranteed by CEQA that agencies must consider new environmental evidence that comes to light before reviewing and approving impactful projects.”

The department’s agreement to reevaluate SGARs led to the passage of AB 1788 in 2020, which placed a moratorium on the use of those products but left diphacinone in widespread use. All anticoagulant rodenticides work by causing target species, like rodents, to bleed to death. However, multiple studies have documented that wildlife preying on rodents poisoned by anticoagulants can suffer secondary effects that can lead to debilitating diseases, like the parasitic skin infection mange and spontaneous hemorrhaging, as well as death. Diphacinone in particular has been shown to jeopardize a wide range of bird and mammals, including owls, bobcats, coyotes, and even bears.

“The record is clear that less dangerous and ecologically sound alternatives to diphacinone are available for rodent control,” said Stephanie Safdi, an attorney with the Stanford Environmental Law Clinic. “Under CEQA, the California Department of Pesticide Regulation will need to carefully consider safe and effective alternatives like Integrated Pest Management strategies when it makes its regulatory decisions about diphacinone’s registration in light of the evidence that the compound is causing widespread ecological damage.”

If the department decides based on the evidence that diphacinone may be causing serious harm or that a safer alternative may be available, it will be required by its regulations to put diphacinone into reevaluation. Based on further environmental and safety review during the reevaluation process, the department will then decide whether to impose restrictions on the product or cancel its registration altogether.

A four-month-old coyote pup with mange, found unconscious and emaciated with diphacinone detected in its liver tissue.

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Raptors Are The Solution is a nonprofit project of Earth Island Institute based in Berkeley, CA, dedicated to educating the public about the ecological role of birds of prey and other wildlife and the danger they face from rodenticides.