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13 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 CENTER FOR FOOD SAFETY, ORGANIC ) Case No.:  
SEED ALLIANCE, SIERRA CLUB, and HIGH )  
16 MOWING ORGANIC SEEDS, )  
17 Plaintiffs, ) COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF  
18 vs. )  
19 CHARLES CONNOR, in his official )  
capacity as Acting Secretary of the United States )  
20 Department of Agriculture; and CINDY SMITH, )  
in her official capacity as Administrator of the )  
21 Animal and Plant Health Inspection Service, )  
22 Defendants. )

## INTRODUCTION

1  
2           1.       This lawsuit challenges a decision by the United States Department of Agriculture  
3 (“USDA”) to deregulate a variety of sugar beet that has been genetically engineered by Monsanto  
4 Company to resist glyphosate, the active ingredient in the herbicide Roundup. As a result of  
5 deregulation, these “Roundup Ready” sugar beets will be grown and distributed on a commercial  
6 scale throughout the United States for the first time this year.

7           2.       The environmental impacts associated with growing genetically engineered (“GE”)  
8 Roundup Ready crops are well documented. Wind-blown pollen from GE sugar beets will  
9 contaminate conventional sugar beets and other closely related crops, such as chard and table beets.  
10 Such biological contamination is costly to detect and detrimental to farmers and consumers of  
11 conventional and organic varieties.

12           3.       In addition, scientific studies have shown that large-scale cultivation of Roundup  
13 Ready crops results in a significant increase in Roundup use, because there is no need to be precise  
14 and judicious in applying Roundup to such crops. Roundup contains a potent mix of chemicals that  
15 can be toxic to consumers, workers, birds, insects, aquatic organisms and plants. Moreover, just as  
16 overuse of antibiotics eventually breeds drug-resistant bacteria, overuse of Roundup eventually  
17 breeds Roundup-resistant weeds. To control these “super weeds,” farmers must resort to ever more  
18 toxic and hazardous herbicides despite their ill effect on the environment, workers and consumers.

19           4.       USDA’s decision to deregulate Roundup Ready sugar beets violated federal law. As  
20 set forth below, the environmental assessment prepared by USDA in connection with its  
21 deregulation determination is cursory and wholly inadequate, in violation of the National  
22 Environmental Policy Act (“NEPA”). In addition, USDA’s deregulation determination violates the  
23 Administrative Procedure Act and the Plant Protection Act.

24           5.       Plaintiffs Center for Food Safety, Organic Seed Alliance, Sierra Club and High  
25 Mowing Organic Seeds ask this Court to vacate USDA’s deregulation determination, order USDA to  
26 prepare a full environmental impact statement in connection with any future deregulation  
27 determination, and enjoin any planting, sale or dissemination of Roundup Ready sugar beets pending  
28 USDA’s compliance with all applicable federal laws.

1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal  
3 question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2201-02 (declaratory relief),  
4 and 5 U.S.C. § 702 (Administrative Procedure Act). An actual controversy exists between the  
5 parties within the meaning of 28 U.S.C. § 2201 (declaratory judgments).

6 7. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(e), because one of the  
7 plaintiffs resides in this district.

8 **INTRADISTRICT ASSIGNMENT**

9 8. Pursuant to Local Rule 3-2(c) and (d), assignment of this action to the San Francisco  
10 or Oakland Divisions is appropriate because one of the plaintiffs resides in San Francisco.

11 **PARTIES**

12 9. Plaintiff Center for Food Safety (“CFS”) brings this action on behalf of itself and its  
13 members. CFS is a Washington, D.C., nonprofit corporation that has offices in San Francisco, CA  
14 and Washington, D.C. CFS and its members are being, and will be, adversely affected by USDA’s  
15 actions complained of herein.

16 10. Since the organization’s founding in 1997, CFS has sought to address the adverse  
17 impacts of industrial farming and food production systems on human health, animal welfare, and the  
18 environment. CFS is a national non-profit membership organization with members in almost every  
19 state across the country, including members in states and locations where sugar beets are grown.

20 11. CFS seeks to protect human health and the environment by ensuring that GE products  
21 are thoroughly safety-tested prior to any marketing; that such products are tested in a manner that  
22 minimizes any risk of contaminating non-GE seeds, organic seeds, food supplies or the environment;  
23 and that such products and foods created through genetic engineering, if on the market, are  
24 appropriately labeled. CFS also seeks to provide consumers with a means of identifying GE foods  
25 on the market and to encourage full public participation in defining and addressing the issues  
26 presented by GE crops. To this end, CFS sends out action alerts to its True Food Network, a 57,000  
27 member network. These action alerts generate letters to governmental officials concerning genetic  
28 engineering and other issues affecting a sustainable food system.

1           12. To achieve its goals, CFS disseminates to government agencies, members of  
2 Congress, and the general public a wide array of educational and informational materials addressing  
3 the introduction of GE crops into the environment and food supply. These materials include, but are  
4 not limited to, reprints of news articles, policy reports, legal briefs, press releases, action alerts, and  
5 fact sheets. Collectively, the dissemination of this material has made CFS an information  
6 clearinghouse for public involvement and governmental oversight of the use of genetic engineering  
7 in our nation's food supply.

8           13. The interests of CFS and its members are being, and will be, adversely affected by  
9 USDA's actions complained of herein. USDA's decision to deregulate Roundup Ready sugar beets  
10 ensures that CFS members are, and will be, aesthetically, economically, and physically injured by  
11 the spread of GE food. In particular, CFS' members grow organic seed crops related to sugar beets  
12 and consume products made with sugar derived from sugar beets. CFS' members also regularly eat  
13 organic foods and desire foods that are free of GE material and chemical pesticides. The  
14 proliferation of Roundup Ready sugar beets will contaminate non-GE sugar beet seeds, organic and  
15 conventional non-GE related seeds lines such as chard and table beets, and reduce the supply of  
16 sugar and food processed with sugar that is not contaminated with GE material. The cultivation of  
17 Roundup Ready sugar beets will also greatly increase the use of Roundup on sugar beets, and  
18 therefore increase Roundup residues in foods made with sugar from such sugar beets. USDA's  
19 actions in allowing the introduction of GE sugar beets into the environment will make it more  
20 difficult for CFS' members to produce, sell, and eat foods not contaminated by GE material.

21           14. CFS and its members are also concerned about the proliferation of GE crops without  
22 adequate environmental analysis and without labeling. USDA's deregulation of Roundup Ready  
23 sugar beets adversely affects CFS and its members because the action will allow GE sugar beets to  
24 be placed in the stream of commerce without labeling, adequate environmental review, or any other  
25 appropriate limitations.

26           15. The agricultural, environmental and economic interests, as well as the health, well-  
27 being and enjoyment, of CFS and its members have been, and continue to be, threatened by USDA's  
28 deregulation of Roundup Ready sugar beets.

1           16. Plaintiff Organic Seed Alliance (“OSA”) brings this action on behalf of itself and its  
2 partners, the farmers it serves. OSA and its partners are being, and will continue to be, adversely  
3 affected by USDA’s actions complained of herein. OSA is a Port Townsend, WA-based nonprofit  
4 corporation, founded in 1975 as Abundant Life Seed Foundation, with a name change to Organic  
5 Seed Alliance in 2003. OSA promotes the ethical development and stewardship of the genetic  
6 resources of agricultural seed, and accomplishes its goals through collaborative education and  
7 research programs with organic farmers and other seed professionals.

8           17. OSA’s primary mission is the development and stewardship of organic seed varieties,  
9 and it is concerned that the commercialization of GE sugar beets will contaminate organic seed  
10 varieties of related species. When such contamination occurs, OSA and its partners are harmed,  
11 because the seed lines they breed and protect are compromised and they must increase efforts to try  
12 to prevent further contamination. USDA’s decision to allow the introduction of Roundup Ready  
13 sugar beets into the environment makes it more difficult, if not impossible, for OSA’s partner  
14 farmers to continue to grow and sell related crops not contaminated by GE material.

15           18. The agricultural, environmental and interrelated economic interests, as well as the  
16 health, well-being and enjoyment, of OSA and its partners have been, and continue to be, threatened  
17 by USDA’s deregulation of Roundup Ready sugar beets.

18           19. Plaintiff Sierra Club brings this action on behalf of itself and its more than 1.3 million  
19 members and supporters. Sierra Club and its members are being, and will be, adversely affected by  
20 USDA’s actions complained of herein. The Sierra Club is a national nonprofit organization  
21 dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and  
22 promoting the responsible use of Earth’s ecosystems and resources; to educating and enlisting  
23 humanity to protect and restore the quality of the natural and human environment; and to using all  
24 lawful means to carry out these objectives. Sierra Club is a California nonprofit corporation  
25 headquartered in San Francisco, CA.

26           20. The Sierra Club’s interests encompass endangered species, habitat protection,  
27 pollution, genetic engineering, and industrial agriculture. The Sierra Club’s Genetic Engineering  
28 Committee educates the public and advocates for regulatory reform to protect the natural

1 environment and human health from the threats posed by the release of novel GE organisms,  
2 including Roundup Ready crops such as the sugar beets that are the subject of USDA's deregulation  
3 determination at issue herein.

4 21. The Sierra Club's members are, and will be, aesthetically, physically and spiritually  
5 injured by the spread of GE sugar beets. Sierra Club has members in every state across the country,  
6 including members in states and locations where sugar beets are grown. The Sierra Club's members  
7 include farmers, ranchers, rural residents who live in agricultural locations where Roundup Ready  
8 sugar beets will be grown and who will be affected by the GE sugar beet crop, as well as others who  
9 enjoy the farmland and the surrounding natural environment, including native plants and aquatic  
10 organisms. Members who grow sugar beets, or related species of chard and table beets, may lose  
11 their ability to grow their organic and/or conventional crop of choice and suffer from a reduced  
12 market if such crops are contaminated with GE sugar beets. Members who enjoy the farmland and  
13 natural environment where or near where GE sugar beets are grown, will be aesthetically injured if  
14 the increased herbicides used on GE sugar beets drifts and adversely affects native plant species,  
15 aquatic organisms and other non-targets species. Sierra Club members also regularly eat organic  
16 foods and desire foods that are free of GE materials and chemical herbicides, and may lose their  
17 ability to choose to eat GE-free organic and/or conventional foods.

18 22. USDA's deregulation of Roundup Ready sugar beets adversely affects Sierra Club  
19 and its members, because deregulation will allow GE sugar beets to be placed in the stream of  
20 commerce without labeling, adequate environmental review, or any other limitations.

21 23. Plaintiff High Mowing Organic Seeds brings this action on behalf of itself. High  
22 Mowing Organic Seeds, a Vermont-based corporation, is a premier organic seed company in the  
23 U.S., supplying primarily commercial growers with 100% certified organic vegetable, flower and  
24 herb seeds. High Mowing Organic Seeds and has expanded greatly since its founding in 1996 to  
25 meet the growing demand for high quality organic seed.

26 24. High Mowing Organic Seeds is different from most other seed companies in several  
27 key ways: 1) it offers only 100% certified organic seeds; 2) it works directly with its seed growers to  
28 ensure genetic purity and highest quality seed; 3) it is involved in all aspects of the seed industry,

1 from breeding and research and seed production, to seed cleaning, testing and distribution. Through  
2 this level of oversight and industry involvement, High Mowing Organic Seeds is able to offer the  
3 highest quality seed available.

4 25. High Mowing Organic Seeds distributes nine varieties of table beets and five varieties  
5 of chard. Contamination from GE sugar beets threatens the purity of these seed lines and status of  
6 these seed varieties as organic. USDA's decision to deregulate Roundup Ready sugar beets will  
7 change fundamentally the nature of the beet and chard seed industry. The environmental effects of  
8 the decision will cause economic and aesthetic injury to High Mowing Organic Seeds.

9 26. Defendant Charles F. Conner is the Acting Secretary of USDA and is being sued in  
10 his official capacity.

11 27. Defendant Cindy Smith is the Administrator for the USDA's Animal and Plant  
12 Health Inspection Service ("APHIS") and is being sued in her official capacity.

13 28. Defendants Conner and Smith are collectively referred to herein as USDA.

#### 14 **STATUTORY BACKGROUND**

##### 15 ***The Plant Protection Act***

16 29. The Plant Protection Act authorizes USDA, through APHIS, to issue regulations "to  
17 prevent the introduction of plant pests into the United States or the dissemination of plant pests  
18 within the United States." 7 U.S.C. § 7711(a).

19 30. Pursuant to this authority, APHIS regulates "organisms and products altered or  
20 produced through genetic engineering that are plant pests or are believed to be plant pests." 7 C.F.R.  
21 § 340.0(a)(2), n. 1. Specifically, the regulations make it unlawful for any person to introduce  
22 without a permit any organism that has been genetically engineered from one or more enumerated  
23 organisms that are considered plant pests. 7 C.F.R. § 340.2(a).

24 31. Anyone may petition APHIS to de-regulate a GE crop. However, before a GE crop  
25 may be de-regulated, APHIS must review an applicant's deregulation petition and make a  
26 determination that the particular GE crop does not present a plant pest risk and should not be  
27 regulated. 7 C.F.R. § 340.6.

28 32. After APHIS issues a deregulation determination with respect to a GE crop, APHIS

1 claims it has no further legal authority to regulate that crop and the GE crop can be commercially  
2 propagated, cultivated and sold without restriction or conditions.

### 3 *The National Environmental Policy Act*

4 33. NEPA is “our basic national charter for protection of the environment.” 40 C.F.R.  
5 § 1500.1(a). NEPA emphasizes the importance of comprehensive environmental analysis to ensure  
6 that federal agencies carefully examine the environmental consequences of their actions before they  
7 take such actions. The statute also ensures that the public is made aware of the environmental  
8 effects of agencies’ decisions, and is allowed to participate in the process of preparing  
9 environmental reviews. One of NEPA’s goals is to preserve and maintain “an environment which  
10 supports diversity and variety of individual choice.” 42 U.S.C. § 4331(a)(4).

11 34. To help ensure that agencies make informed decisions, NEPA requires that they  
12 prepare a detailed environmental impact statement (“EIS”) before undertaking “major Federal  
13 actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

14 35. An agency may prepare an environmental assessment (“EA”) to decide whether the  
15 environmental impact of a proposed action warrants the preparation of an EIS. 40 C.F.R. § 1508.9.  
16 An EA must provide sufficient evidence and analysis to determine whether an EIS or a finding of no  
17 significant impact (“FONSI”) should be prepared. If an agency decides not to prepare an EIS, it  
18 must provide a convincing statement why a project’s impacts are insignificant. If substantial  
19 questions are raised about whether a project may have a significant effect on the environment, an  
20 EIS must be prepared. An impact that is both beneficial and adverse may create a significant effect  
21 “even if the Federal agency believes that on balance the effect will be beneficial.” 40 CFR §  
22 1508.27(b)(1).

23 36. An agency must evaluate the “[u]nique characteristics of the geographic area such as  
24 proximity to . . . prime farmlands.” 40 CFR § 1508.27(b)(3). Moreover, if the proposed action’s  
25 effects are likely to be highly controversial, or are highly uncertain or involve unique or unknown  
26 risks, or may be cumulatively significant, NEPA regulations provide that the action’s effects should  
27 be considered significant and an EIS should be prepared. 40 CFR § 1508.27(b)(4), (5), (7).

28 37. An agency also must evaluate potential adverse economic effects that are interrelated



1 with natural or physical environmental effects. 40 C.F.R. § 1508.14.

## 2 FACTUAL BACKGROUND

### 3 *Background on Sugar Beets*

4 38. Sugar beets are grown on approximately 1.3 million acres, with a value of \$21.1  
5 billion annually to the U.S. economy. In 2003, the U.S. produced 30,624,000 tons of sugar beets.

6 39. Sugar beets are grown in temperate climates where the soil is rich and the growing  
7 season is approximately five months long. In the U.S., sugar beets are grown in 13 states  
8 (California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio,  
9 Oregon, Texas, Washington, and Wyoming) and account for a little more than half of all refined  
10 sugar produced domestically.

11 40. Sugar beets are grown in the Imperial Valley of California, where there occurs a  
12 related weedy species (*Beta macrocarpa*) that can cross-pollinate with sugar beets.

13 41. Most sugar beet seed in the United States is produced in Oregon's Willamette Valley.  
14 On information and belief, most of the sugar beet seed production during the winter of 2007-2008  
15 will be Roundup Ready. This sudden, broad-scale planting of GE sugar beet seed will likely cause  
16 contamination of organic seed lines of related crops such as chard and table beets.

### 17 *Deregulation of Roundup Ready Sugar Beets*

18 42. The Roundup Ready sugar beets at issue in this case, known as "Event H7-1," have  
19 been engineered by Monsanto and the German corporation KWS SAAT AG ("KWS") to include a  
20 gene that confers tolerance to glyphosate, the active ingredient in Monsanto's Roundup herbicide.  
21 According to APHIS, "Event H7-1 was engineered to be glyphosate tolerant by inserting a gene that  
22 codes for the enzyme 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS) into the sugar beet  
23 genome. The gene is from the common soil bacterium *Agrobacterium sp.* strain CP4 and was  
24 introduced into these sugar beets via an *Agrobacterium*- mediated transformation protocol."  
25 USDA/APHIS Environmental Assessment and Finding of No Significant Impact ("EA") at 2.

26 43. Because regulations adopted by APHIS pursuant to the Plant Protection Act list  
27 *Agrobacterium* as a plant pest, 7 C.F.R. § 340.2(a), Event H7-1 Roundup Ready sugar beets  
28 qualified as a "regulated article" and could not be introduced into the environment without a permit

1 from APHIS. 7 C.F.R. §§ 340.0(a), 340.1.

2 44. On November 19, 2003, APHIS received a petition from Monsanto and KWS to  
3 deregulate Event H7-1 Roundup Ready sugar beets.

4 45. In 1998, APHIS granted a previous petition from Monsanto to deregulate a different  
5 variety of Roundup Ready sugar beets, known as “Event GTSB77.” However, Event GTSB77 sugar  
6 beets were never grown commercially.

7 46. On April 14, 1999, EPA increased glyphosate residue tolerance levels 125-fold, from  
8 0.2 parts per million (“ppm”) to 25 ppm for sugar beet dried pulp, and the glyphosate residue  
9 tolerance on sugar beet roots, from which the sugar is extracted, from just 0.2 to 10 parts per million  
10 (ppm). This represents a 50-fold or 5,000% increase in allowable toxic glyphosate residues on sugar  
11 beets for sugar production. 64 Fed. Reg. 18360, 18367.

12 47. On October 19, 2004, APHIS made available for public comment an EA for a  
13 proposed “determination of nonregulated status” with respect to the Event H7-1 Roundup Ready  
14 sugar beets at issue in this case. 69 Fed. Reg. 61466, 61467.

15 48. The Center for Food Safety and others submitted extensive comments on the EA.  
16 These comments raised several issues including but not limited to, biological contamination to  
17 related species, development of weeds resistant to Roundup, increased herbicide use, adverse  
18 impacts on organic production, and adverse economic impacts interrelated to the environmental  
19 impacts caused by the deregulation.

20 49. On March 17, 2005, APHIS announced a “Deregulation Determination and Finding  
21 of No Significant Impact” for Event H7-1 Roundup Ready sugar beets. APHIS concluded that  
22 deregulation “would not present a risk of plant pest introduction or dissemination.” 70 Fed. Reg.  
23 13007, 13008. APHIS made six findings, *inter alia*, that deregulation “. . . (3) is unlikely to increase  
24 the weediness potential of any other cultivated or wild species with which it can interbreed . . . (4)  
25 will not cause damage to raw or processed agricultural commodities; . . . and (6) should not reduce  
26 the ability to control pests and weeds in sugar beet or other crops.” *Id.* According to APHIS, the  
27 effect of its deregulation determination “is that Monsanto/KWS’ H7-1 sugar beet is no longer  
28 considered a regulated article under APHIS regulations in 7 CFR part 340. Therefore, the

1 requirements pertaining to regulated articles under those regulations no longer apply to the subject  
2 sugar beet or its progeny.” *Id.*

3 50. APHIS arbitrarily restricted, in a number of ways, the scope of its analysis of the  
4 environmental impacts of deregulating Event H7-1 Roundup Ready sugar beets. For example,  
5 APHIS failed to evaluate the impacts of increased use of glyphosate that predictably occurs in  
6 connection with growing glyphosate-tolerant crops. Instead, APHIS acknowledged that its EA  
7 “specifically addresses the potential for impacts to the human environment through the use in  
8 agriculture” and “does not address the separate issue of the potential use of the herbicide glyphosate  
9 in conjunction with these plants.” EA at 2.

10 51. The EA prepared by APHIS evaluated only three alternatives with respect to the  
11 petition: (1) a “no action” decision that would maintain the GE sugar beets as regulated articles (*i.e.*,  
12 denying the petition in its entirety); (2) a determination that the GE sugar beets are no longer  
13 regulated. (*i.e.*, granting the petition in its entirety); and (3) a determination that the GE sugar beets  
14 are no longer regulated articles, in part, which could result in approval of the petition with  
15 geographic restrictions. *Id.* at 5-6. APHIS arbitrarily and capriciously failed to consider additional  
16 reasonable alternatives that might mitigate the adverse impacts of deregulation.

### 17 ***The Effects of Deregulation***

18 52. When event H7-1 Roundup Ready sugar beets were first deregulated in 2005, there  
19 was broad market rejection of the new variety. Thus, there was no commercial production of GE  
20 sugar beets following the 2005 deregulation. Recently, information became available that  
21 commercial scale planting of GE sugar beets would begin in the spring of 2008.

22 53. The cultivation of Roundup Ready sugar beets will increase the use of Roundup.  
23 However, USDA, through APHIS, has not analyzed how Roundup use will increase, nor examined  
24 the corresponding environmental impacts.

25 54. Herbicide tolerance develops in weeds when chemical pressure encourages gene  
26 mutations that confer herbicide tolerance. Increased glyphosate use on Roundup Ready sugar beets  
27 will result in the development of glyphosate-resistant weeds. Adoption of Roundup Ready corn and  
28 soybeans, and consequent increased use of glyphosate on those crops, has already led to weeds in

1 many locations having developed resistance to glyphosate. Widespread planting of Roundup Ready  
2 sugar beets will worsen this problem, especially where sugar beets are used in rotation with other  
3 Roundup Ready crops. These “super weeds” will spread to agricultural lands in the surrounding  
4 areas. However, USDA did not analyze the cumulative effects on the development of glyphosate  
5 resistant weeds caused by the commercialization of yet another Roundup-tolerant crop.

6 55. Increasing Roundup resistance in weeds leads to increased use of other, more toxic,  
7 persistent herbicides and increased costs to both farmers who grow the herbicide-tolerant sugar beets  
8 and those who do not.

9 56. The cultivation of Roundup Ready sugar beets will likely cause cross-pollination that  
10 will spread the glyphosate-tolerant genes into related weeds and crops. Because of the wide area  
11 over which beet pollen can be spread, there is an imminent and significant potential for Roundup  
12 Ready sugar beets to contaminate related weeds, in particular *Beta macrocarpa*, a sexually  
13 compatible weed found in California, including the Imperial Valley where sugar beets are grown.  
14 Such cross pollination will breed weeds that are resistant to Roundup.

15 57. Roundup Ready sugar beets can also cross-pollinate with non-GE sugar beets and  
16 other related crops, such as chard and table beets, thereby affecting the ability of organic farmers to  
17 cultivate crops free of genetic contamination and maintain their organic status. This threatens the  
18 ability of farmers to choose to grow related organic seeds and the ability of consumers to choose to  
19 consume food from non-GE crops. There is an imminent and significant potential for GE sugar beet  
20 seed to contaminate non-GE sugar beet seed and seed of other related crops, because sugar beet seed  
21 production is primarily concentrated in the Oregon State Willamette Valley, and because sugar beet  
22 pollen can be spread over a wide area.

23 58. The unregulated use of Roundup Ready sugar beets in the U.S. significantly threatens  
24 the ability of sugar beet farmers to choose to convert to growing organic sugar beets, because there  
25 will be little or no seed that is free of genetic contamination.

26 59. USDA’s decision to deregulate Roundup Ready sugar beets allows commercial  
27 cultivation with no restrictions and inadequate environmental review. USDA failed to establish or  
28 even analyze possible rules that would require farmers who plant Roundup Ready seeds to create

1 refuge or buffer areas to avoid cross-pollination with neighbors' crops or surrounding weeds.

2         60. Allowing unregulated commercialization of GE sugar beets will be detrimental to  
3 organic producers of related seed varieties and non-GE sugar beets for producing sugar for food use.  
4 By regulation, organic farmers must use organic seed if it is commercially available, and use of seed  
5 known to be contaminated with GE traits is prohibited. 7 C.F.R. § 205.204.

6         61. Natural food consumers are wary of potential contamination from GE organisms, and  
7 will reject organic products that are contaminated with GE material. For example, food products  
8 such as chard and table beets that are contaminated by Roundup Ready sugar beets will be  
9 unattractive to organic consumers preferring GE-free foods. Also, food products containing sugar  
10 beet sugar contaminated by Roundup Ready sugar beets will be unattractive to consumers preferring  
11 foods made without genetically modified sugar. Farmers who market their products as organic  
12 and/or non-GE will be forced to test their sugar beet stocks or related seed stocks to prove their  
13 marketing claims, raising production costs. Biological contamination of conventional non-GE sugar  
14 beets, and organic and conventional related species of chard and table beets, could adversely effect  
15 market prices of these crops at potentially substantial market losses.

16         62. USDA's decision to deregulate GE sugar beets may change fundamentally the nature  
17 of the sugar beets grown in the United States. Roundup Ready crops that have been deregulated by  
18 USDA have become a significant portion of the individual crops grown. For example, in 2004, a  
19 substantial portion of the corn (10.5 million acres or 13% of the total), upland cotton (4.2 million  
20 acres or 30% of the total) and soybean (63.6 million acres or 85% of the total) grown in the U.S. was  
21 genetically engineered to be herbicide-tolerant (primarily glyphosate tolerant). (EA at 9). Sugar  
22 beets currently comprise over half the U.S. sugar market. This fundamental shift to GE sugar beets  
23 could have adverse consequences on the U.S. sugar market.

24         63. The introduction of Roundup Ready sugar beets will eventually contaminate many  
25 non-GE related varieties, including non-GE sugar beets, chard, and table beets. It is reasonably  
26 foreseeable that contamination from Roundup Ready sugar beets will contaminate the purity of  
27 germplasm of related species, potentially destroying these related varieties used by conventional and  
28 organic farmers and plant breeders. This may fundamentally change the nature and type of seed

1 varieties grown in the U.S.

2 64. No agency of the federal government tests GE foods for their effects on human  
3 health. For example, the FDA only reviews data voluntarily submitted by the company with the  
4 economic interest in marketing the GE product. The FDA conducted no independent tests with  
5 respect to Roundup Ready sugar beets. Thus, it is particularly important that USDA prepare an EIS  
6 analyzing in detail all the potential environmental impacts of any decision to deregulate GE sugar  
7 beets.

8 65. USDA failed to analyze the potential significant environmental effects that may be  
9 caused by the deregulation of Roundup Ready sugar beets. Since USDA began its regulatory  
10 program for GE crops more than ten years ago, USDA has yet to issue an EIS assessing any  
11 individual action concerning any GE crop. In response to court order, USDA is finally in the  
12 process of preparing an EIS examining the impacts of deregulating GE Roundup Ready alfalfa.  
13 Additionally, USDA is preparing an EIS for the deregulation of Roundup Ready Bentgrass. Under  
14 NEPA, USDA must prepare an EIS analyzing the potential environmental and related economic and  
15 socio-economic costs of its deregulation of Roundup Ready sugar beets, but it has failed to do so.

16 66. Pursuant to NEPA, USDA must prepare an EIS in connection with any deregulation  
17 of Roundup Ready sugar beets that examines, *inter alia*, the environmental and interrelated  
18 economic effects of increased use of glyphosate, increased incidence of glyphosate-resistant “super  
19 weeds,” increased use of more toxic and persistent herbicides, cross-pollination and contamination  
20 of organic and conventional crops resulting from planting Roundup Ready sugar beets, and whether,  
21 how, and at what cost Roundup Ready sugar beets can be kept separate from conventional, organic  
22 sugar beets and other related varieties.

## 23 **CLAIMS FOR RELIEF**

### 24 **FIRST CLAIM FOR RELIEF**

#### 25 **(Violation of the National Environmental Policy Act 26 and Administrative Procedure Act)**

27 67. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
28 contained in the preceding paragraphs.

68. USDA failed to take a hard look at the environmental effects of its decision to

1 deregulate Roundup Ready sugar beets, improperly narrowed the analysis that it performed in the  
2 EA, and failed to consider the broad array of deregulation's potential environmental impacts.

3 69. USDA failed to analyze the environmental and health consequences of the potential  
4 fundamental change in the type of sugar beet grown in the United States. More specifically, it failed  
5 to consider the environmental and related economic and socio-economic impacts of genetic  
6 contamination resulting from Round Ready sugar beets.

7 70. USDA further failed to take a hard look at the affect of deregulation on prime  
8 farmland, including the contamination of such farmland with GE sugar beet traits, increased  
9 application of the herbicide glyphosate, and the development of glyphosate-tolerant weeds, which  
10 will make farming on such prime farmland more difficult.

11 71. USDA failed to take a hard look at the significant cumulative effects of glyphosate  
12 use; the economic impacts of its deregulation determination on non-GE beet farmers, growers of  
13 non-GE and organic seeds such as chard and table beets; the potentially significant harm to  
14 threatened and endangered species and their critical habitats; the potentially significant harm to  
15 native plant species, aquatic organisms, birds, insects and other non-targets species; the alternatives  
16 other than the proposed deregulation action; and potential mitigations of the effects of deregulation.

17 72. The EA prepared by USDA in connection with its decision to deregulate Roundup  
18 Ready sugar beets is inadequate and flawed, and USDA's reliance on it was and is arbitrary and  
19 capricious, an abuse of discretion and otherwise not in accordance with law, and without observance  
20 of procedures required by law, in violation of NEPA and the APA.

## 21 **SECOND CLAIM FOR RELIEF**

### 22 **(Violation of the National Environmental Policy Act 23 and Administrative Procedure Act)**

24 73. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
25 contained in the preceding paragraphs.

26 74. Each federal agency must prepare an EIS with respect to each major action of such  
27 agency that may significantly affect the quality of the human environment.

28 75. USDA's decision to deregulate Roundup Ready sugar beets may cause significant  
and reasonably foreseeable direct, indirect and cumulative environmental and related economic

1 impacts. For the reasons alleged, considered both individually and collectively, USDA's finding  
2 that deregulation of Roundup Ready sugar beets will have no significant impact was and is arbitrary,  
3 capricious, an abuse of discretion and otherwise not in accordance with law, and without observance  
4 of procedures required by law, in violation of NEPA and the APA.

5 76. Pursuant to NEPA, USDA must prepare an EIS to address significant environmental  
6 and related economic impacts that will result from the deregulation of Roundup Ready sugar beets.

### 7 **THIRD CLAIM FOR RELIEF**

#### 8 **(Violation of the Plant Protection Act 9 and Administrative Procedure Act)**

10 77. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
11 contained in the preceding paragraphs.

12 78. USDA made six findings in connection with its deregulation of Roundup Ready sugar  
13 beets. USDA determined:

14 that H7-1 sugar beet: (1) Exhibits no plant pathogenic properties; (2) is no more  
15 likely to become weedy than the nontransgenic parental line or other cultivated sugar  
16 beet; (3) is unlikely to increase the weediness potential of any other cultivated or wild  
17 species with which it can interbreed; (4) will not cause damage to raw or processed  
18 agricultural commodities; (5) will not harm threatened or endangered species or  
19 organisms that are beneficial to agriculture; and (6) should not reduce the ability to  
20 control pests and weeds in sugar beets or other crops.

21 79. USDA's decision to deregulate Roundup Ready sugar beets is unsupported by the  
22 evidence in the record and is arbitrary and capricious, an abuse of discretion and otherwise not in  
23 accordance with law, and without observance of procedures required by law, in violation of the Plant  
24 Protection Act and the APA.

### 25 **PRAYER FOR RELIEF**

26 Wherefore, plaintiffs respectfully request that the Court:

27 A. Issue a declaratory judgment that the EA prepared by USDA in connection with its  
28 decision to deregulate Roundup Ready sugar beets violated and is violating NEPA and the  
Administrative Procedure Act;

B. Issue a declaratory judgment that USDA's deregulation of Roundup Ready sugar  
beets is a major federal action that may have a significant impact on the human environment;



1 C. Issue a declaratory judgment that USDA's deregulation of Roundup Ready sugar  
2 beets violated and is violating the Plant Protection Act and the Administrative Procedure Act;

3 D. Vacate USDA's decision to deregulate Roundup Ready sugar beets;

4 E. Order USDA to prepare a full EIS for any decision to deregulate Roundup Ready  
5 sugar beets;

6 F. Enter appropriate preliminary and permanent injunctive relief to ensure that USDA  
7 complies with NEPA, the Plant Protection Act and the Administrative Procedure Act and avoids  
8 irreparable harm to the environment until such time as USDA is in full compliance with the law;

9 G. Award plaintiffs the costs of this litigation, including reasonable attorney's fees; and  
10 grant such other relief as the Court deems just and proper.

11 Respectfully submitted,

12 Dated: January \_\_\_\_, 2008

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