



ADVOCATES for the West
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VIA EMAIL ONLY

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Dear Director Ashe, Assistant Directors Ford and Woody, Regional Director Thorson, and Ms. Seto:

I write to inform you of some disquieting developments concerning the United States Department of Agriculture's Animal and Plant Health Inspection Services-Wildlife Service (Wildlife Services) unrestrained use and application of the DRC-1339 to kill approximately 4,000 common raven across vast swaths of public lands across southern Idaho. As discussed in detail below, Wildlife Services' expansive use of DRC-1339 – due to begin imminently on behalf of the

Idaho Department of Fish and Game (IDFG) – and its refusal to collect and dispose of the dead, poisoned raven carcasses creates a potential public health emergency, and violates the express terms of the U.S. Environmental Protection Agency’s pesticide label. Advocates for the West requests the U.S. Fish and Wildlife Service (the Service) investigate Wildlife Services’ unlawful use of this highly-toxic avicide in contravention of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136j(a)(2)(G) (FIFRA); immediately revoke IDFG’s Federal Fish and Wildlife Permit number MB25486B-O (MBTA permit) as it was invalidly issued; and commence enforcement actions if Wildlife Services begins its scheduled use of DRC-1339.

DRC-1339 and EPA’s Pesticide Registration Label

DRC-1339 is a slow-acting avicide that is “highly toxic” to birds and freshwater invertebrates, and moderately toxic to mammals. EPA R.E.D. Facts, Starlicide (EPA 1995); Wildlife Services’ Tech. Note, DRC-1339 (Starlicide). DRC-1339 is “very highly toxic” to columbids, corvids, icterids, and starling, and APHIS notes that “the sensitivity of nontarget species to DRC-1339 is not as clear as what is observed for target species.” Eisemann *et al.*, Acute and Chronic Toxicity of Compound DRC-1339 (3-Chloro-4-Methylaniline Hydrochloride) to Birds (APHIS 2001).

On December 11, 2013, EPA issued a label revision for DRC-1339 for use in livestock, nest and fodder depredations. EPA Reg. No. 56228-29 (Pesticide Label). According to the Pesticide Label, DRC-1339 is “fatal is inhaled,” and EPA classifies DRC-1339 as a “**RESTRICTED USE PESTICIDE,**” due to “**High Acute Inhalation Toxicity and Eye and Skin Corrosiveness to Humans; High Acute Toxicity to Nontarget Birds and Aquatic Invertebrates; and the Need for highly Specialized Applicator Training.**” *Id.* at 1.

Because DRC-1339 is a “**RESTRICTED USE PESTICIDE,**” EPA adopted a series of precautionary measures designed to mitigate adverse public health and ecological impacts associated with its use, including:

1. “**Before baits made from this produce are applied, sites that are to be treated must be observed for evidence of nontarget activity and must be prebaited**”;
2. “**DO NOT** store, apply, or even temporarily place treated bait in locations accessible to children, pets, domestic animals, or non-target wildlife”;
3. “Keep persons other than authorized handlers, as well as pets and livestock, away from the bait at all times. Only protected handlers may be in the area during bait application. Exclude unauthorized persons from application sites during prebaiting and baiting,” *id.*; and

4. **“Collect . . . carcasses of dead or dying birds,” and “[d]ispose of . . . carcasses by burning or burial.”** *Id.* (emphasis added).

Id. Under this label, EPA noted that “[i]t is a violation of Federal law to use this product in a manner inconsistent with its labeling.” *Id.* at 1.

Idaho Department of Fish and Game’s Plan to Kill Ravens

The Idaho Legislature appropriated approximately \$100,000 to fund raven control within its jurisdictional boundary. Senate Bill No. 1171, Section 3. A senior IDFG official noted that the raven killing project was “to be a CONTROL effort with no money allocated for any research or monitoring,” and a leading researcher at IDFG noted that they lacked “enough funds to seriously study” the impacts of raven predation on sage grouse populations. Memo from T. Terry, IDFG, to S. Quinn *et al.*, IDFG (Nov. 18, 2013 at 1:41 p.m.); Memo from A. Moser, IDFG to D. Kemner, IDFG (August 1, 2013 at 11:24 a.m.). Moser then began preparing a draft narrative for a “degradation permit” from the Service to allow the control of ravens. Memo from A. Moser to Jack Depperschmidt, U.S. Dept. of Energy-Idaho National Laboratory (Dec. 10, 2013 at 1:40 p.m.).

Shortly after, however, Moser worried that IDFG would get “turned down for a degradation permit because we have not ‘deployed all practical nonlethal measure to relieve the [supposed impacts of raven degradation on sage-grouse],” which is a necessary component for a degradation permit. Memo from A. Moser (Dec. 13, 2013 at 11:08). In this same correspondence, Moser began contemplating an alternative route to killing ravens – i.e., applying for a “scientific collecting permit” instead of a degradation permit. *Id.* Moser worried, however, that IDFG would “need to present [its raven killing plan] as a true study.” *Id.*

The next day, a senior appointee at IDFG ordered Moser to “move swiftly with the scientific collecting permit.” Memo from J. Gould to A. Moser (Dec. 14, 2014 at 4:55 p.m). Days later, another IDFG employee noted that she was “[g]lad to hear we are pursuing the scientific collecting permit path. Much more likely to go through relatively quickly.” Memo From C. Moulton to A. Moser (Dec. 19, 2013 at 12:37 p.m.). IDFG then began to create a sham study, even though earlier IDFG employees realized that the so-called study “might not be able to tell us whether or not raven control was beneficial to sage-grouse. But by targeting [ravens], we have some justification there for raven control.” Email from A. Moser to D. Kemner (August 1, 2013 at 11:24 a.m.).

On December 23, 2013, IDFG submitted to the Service an application for a two-year Scientific Collecting Permit. Letter from V. Moore, IDFG, to J. Miller, USFWS (Dec. 23, 2013), and attachments (permit application). *But see* Memo from S. Nadeau, IDFG, to D. Kemner *et al.* (March 18, 2004 at 9:29 a.m.) (noting

that the IDFG raven killing experiment “is a 3-5 year study”). Although the Idaho legislature ordered the lethal control of ravens – with no funds appropriated for research or monitoring – IDFG purposefully hid this information from the Service. *Compare* Memo from A. Moser to C. Moulton, IDFG (Dec. 6, 2013 at 1:56 p.m.) (“One quick question – in my conversation with Jennifer Miller[, the Service’s MBTA Permits Branch Chief], should I NOT mention that the Legislature has told us to do this?”); *with* Memo from C. Moulton to A. Moser (Dec. 6, 2013 at 3:15 p.m.) (“I don’t think I would volunteer those specifics”). *See also* Memo from T. Terry, IDFG, to S. Quinn *et al.*, IDFG (Nov. 18, 2013 at 1:41 p.m.) (noting the funds appropriated are to support a raven “CONTROL effort with no money allocated for any research or monitoring”).

According to the permit application, IDFG planned to kill approximately 4,000 common ravens using DRC-1339 laced eggs in five different areas across Idaho. Permit Application at 3 (unpaginated). *See also id.* at IDFG Response to Question 2b), Evaluation of Removal of Common Ravens to Benefit At-risk Sage-grouse Populations, at p. 6 (IDFG Evaluation). These areas include public lands managed by the Department of Energy-Idaho National Laboratory (INL), U.S. Forest Service, and the Bureau of Land Management – including the Birch Creek watershed. IDFG Evaluation at 2-5, 10-13 (description and maps). *See also* Memo from A. Moser to T. Thomas (Jan. 3, 2014 at 9:41 a.m.) (noting that IDFG “expect[s] most of the work will be on INL or BLM” lands).

IDFG permit application noted that it “may” prebait some control areas with non-poisoned eggs to acclimate ravens to the feeding sites. IDFG Evaluation at 11. Then, between March 1-June 1 in two successive years, IDFG’s proposed to set out approximately 14,000 chicken eggs (7,000 annually) laced with DRC-1339 across the public (and private) lands, mostly at ground level. *Id.*

In its permit application and evaluation, IDFG did not propose to remove all dead, poisoned raven carcasses, nor did IDFG claim that it would post or monitor public access in the areas where the 14,000 laced eggs would be set across the public lands. *See, generally,* Permit Application and IDFG Evaluation

On March 3, 2014, the Service issued to IDFG a Federal Fish and Wildlife Permit authorizing the lethal take of up to 4,000 ravens. Federal Fish and Wildlife Permit No. MB25486B-O (March 3, 2014) (MBTA permit). The MBTA permit permitted IDFG to take ravens via “firearm with nontoxic shot and DRC-1339 egg bait.” *Id.* at 1 (unpaginated). Although IDFG did not propose to collect and destroy all dead raven carcasses, the permit required that “[a]ll dead specimens that you do not transfer to another authorized party must be disposed of by such means as are necessary to ensure that they are not exposed to animals in the wild.” *Id.* at 3. Moreover, the MBTA permit expressly noted that “THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.” *Id.* at 1.

Wildlife Service's Planned Application of DRC-1339

Because IDFG is unauthorized to use DRC-1339, IDFG partnered with Wildlife Services in conducting its ravens control project, and in March 2014, Wildlife Services issued an Environmental Assessment ostensibly reviewing the ecological impacts of placing 14,000 DRC-1339-laden eggs at ground level across Idaho. See Supplement to the Environmental Assessment: Predator Damage Management in Southern Idaho, May 2014.

http://www.aphis.usda.gov/wildlife_damage/nepa/2014_EA_Supplement_final_Southern%20Idaho.pdf (last visited May 12, 2014) (EA), at 23 (noting that DRC-1339 is only available for use by Wildlife Services and individuals working under direct supervision by Wildlife Services).

The EA largely recounts the project scope, locations and removal efforts discussed earlier in IDFG's permit application and evaluation, with a number of important modifications. First, in its EA, Wildlife Service asserts that its use and deployment of DRC-1339 to kill raven may extend beyond two years, because, according to Wildlife Services, "it may take longer than 2 years to conclusively determine impacts of raven removal efforts." EA at 16.

Wildlife Service similarly proposed to extend the poisoning season to include all of June, which coincides with summer break and the concomitant increase in recreational uses of the federal public lands – including the public lands within IDFG's and Wildlife Service's raven killing areas. Compare EA at 23 (stating that the poisoning season will run from March-June), and IDFG Evaluation at 6 (stating that the poisoning season will run from March 1-June 1).

Moreover, in addition to using DRC-1339 to control ravens (as proposed in IDFG's permit application and evaluation), Wildlife Services' EA proposed several additional "kill" methods, including shooting ravens with rifles and shotguns, as well as "thoracic squeeze" (i.e., crushing nestlings via compression of the lungs and chest cavity) and "cervical dislocation" (i.e., breaking the neck and snapping the spine of raven nestlings). EA at 21-23. See also Memo from G. Graves, APHIS, to A. Moser (Jan. 28, 2014 at 3:53).

Wildlife Services' Use of DRC-1339 Violates the Pesticide Label and FIFRA.

Like the IDFG proposal forming the basis of the Service's MBTA permit, Wildlife Services' planned use of DRC-1339 directly violates the EPA's pesticide label in a number of different ways. First, Wildlife Services failed to include any monitoring efforts at its poisoning sites prior to setting the poison, and Wildlife Service claimed only that "most" baiting sites will be pre-baited with untreated eggs. Compare EA at 22 (Wildlife Service agrees to pre-bait "most" sites"); with Pesticide Label at 2 (requiring "**Before baits made from this produce are**

applied, sites that are to be treated **must be observed** for evidence of nontarget activity **and must be prebaited**”).

Second, Wildlife Services plans to place 14,000 eggs at ground level at up to 14,000 different locations across accessible public lands in southern Idaho. EA at 22-23 (noting 7,000 poisoned eggs a year, and “only 1 to 2 treated eggs will be placed at each [poisoning] site”). Indeed, the Birch Creek Watershed – a heavily used recreational area in eastern Idaho – falls within the Zone 8B poison area, and Wildlife Services proposes to place poisoned-eggs in this area through the end of June. EA at 11. *See also* EA at 23 (stating that the poisoning season will run from March-June). But EPA’s label prohibits Wildlife Services from “stor[ing], appl[ing], or even temporarily plac[ing] treated bait in locations accessible to children, pets, domestic animals, or non-target wildlife.” Pesticide Label at 2.

Similarly, EPA’s pesticide label requires that Wildlife Service’s “keep persons other than authorized handlers, as well as pets and livestock, away from the bait at all times. Only protected handlers may be in the area during bait application. Exclude unauthorized persons from application sites during prebaiting and baiting.” *Id.* Yet, Wildlife Service has provided no explanation of how it plans to exclude the public for these vast areas within its poisoning zones, and BLM’s own livestock authorizations for the allotments within these areas permits livestock to be within the poison zones during the March to June timeframe.

Further, Wildlife Services planned use of DRC-1339 fails to adhere to the requirement to collect and dispose of carcasses of poisoned ravens. Pesticide Label at 3 (requiring Wildlife Services to “**Collect . . . carcasses of dead or dying birds,**” and “[d]ispose of . . . carcasses by burning or burial”) (emphasis added). Indeed, the DOE-INL – where a large portion of the poisoning efforts will occur in Zone 8B - has forbidden Wildlife Services from collecting carcasses of dead or dying birds, and disposing of them appropriately. Memo from J. Depperschmidt, DOE-INL, to A. Moser (Jan. 30, 2014 at 10:17 a.m.) (“We do not want any ravens picked up”).

As you can see, Wildlife Services’ planned use of DRC-1339 violates the EPA’s pesticide label in several respects. The Federal Insecticide, Fungicide and Rodenticide Act makes it unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.” 7 U.S.C. §136j(a)(2)(G).

Based on these violations of FIFRA – to say nothing of the concomitant violations of the National Environmental Policy Act, 42 U.S.C. §§ 4332 *et seq.*, the Federal Lands Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.*, the National Forest Management Act, 16 U.S.C. §§ 1600 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, and others, Advocates for the West requests, first, the Service immediately revoke the IDFG’s MBTA permit as the

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permit, itself, was **CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.**" MBTA Permit at 1. This standard cannot be met here, especially in light of the previously discussed non-compliance with the plain terms and conditions of EPA's pesticide label.

Second, Advocates for the West specifically requests the Service's Office of Law Enforcement commence an investigation into Wildlife Service's use of DRC-1339 in other migratory bird control actions nationwide to ensure compliance with EPA's pesticide label.

Advocates for the West further requests the Service commence an enforcement action against Wildlife Services immediately should Wildlife Service undertake any control actions proposed as discussed above. To be sure, Advocates for the West has made Wildlife Services aware of its violations of FIFRA and other federal environmental laws repeatedly over the last several weeks and months, and Wildlife Services' implementation of its proposal raven control in Idaho will be a purposeful and willful violation of federal law.

Please inform me without delay how the Service intends to respond to this requests, including whether the Service has revoked IDFG's MBTA permit, and launched an investigation into Wildlife Services' use of DRC-1339. I can be reached at 208.724.2142, or via email at ttucci@advocateswest.org. Thank you.

Very truly yours,

/s/ Todd C. Tucci

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