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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 ENVIRONMENTAL WORKING GROUP;
24 CITY OF BERKELEY, CENTER FOR FOOD
SAFETY; PESTICIDE ACTION NETWORK
25 NORTH AMERICA; BEYOND
PESTICIDES; CALIFORNIA
26 ENVIRONMENTAL HEALTH INITIATIVE;
ENVIRONMENTAL ACTION COMMITTEE
27 OF WEST MARIN; SAFE ALTERNATIVES
FOR OUR FOREST ENVIRONMENT;
28 CENTER FOR BIOLOGICAL DIVERSITY;

Case No. **RG 15 755648**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

ENDORSED
FILED
ALAMEDA COUNTY
JAN 22 2015
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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CENTER FOR ENVIRONMENTAL
HEALTH; CALIFORNIANS FOR
PESTICIDE REFORM and MOMS
ADVOCATING SUSTAINABILITY

Petitioners and Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF FOOD
AND AGRICULTURE; KAREN ROSS in her
official capacity as Secretary of the California
Department of Food and Agriculture, and
DOES 1 through 100, inclusive,

Defendants and Respondents.

1 environmental review, and without public notice or opportunity to comment, so long as the CDFA
2 determines in its sole discretion that the proposed activities are “substantially similar” to those
3 considered in the PEIR. Second, it demonstrates that the CDFA does not intend to file Notices of
4 Determination (“NOD”) regarding its decisions to carry out Program activities without further
5 environmental review, thus depriving the public of their statutory right under CEQA to timely
6 public notice of agency decisions to approve or “carry out” projects.

7 4. While the CDFA contends that it prepared the PEIR to provide an “up-to-date,”
8 transparent, and comprehensive evaluation of CDFA’s activities,” in fact it is neither up-to-date,
9 transparent nor comprehensive. In its haste to secure for itself this unprecedented and expansive
10 “streamlining” authority, the CDFA ran roughshod over CEQA’s substantive and procedural
11 requirements designed to protect public health, the environment, public participation and
12 government accountability.

13 5. The PEIR is deficient and legally inadequate as an informational document in
14 numerous respects as alleged herein. California courts repeatedly have held that CEQA must be
15 scrupulously followed in order to afford the “fullest protection to the environment.” Moreover,
16 “[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to
17 understand and to consider meaningfully the issues raised by the proposed project.” The
18 importance of this requirement is heightened here because the Program’s proponent and the
19 reviewing agency are one and the same.

20 6. The Fourth District Court of Appeal in *Cleveland National Forest Foundation v.*
21 *San Diego Association of Governments* (2014) 231 Cal. App. 4th 1056, 1075 recently held in
22 vacating SANDAG’s programmatic EIR for a regional transportation plan that the EIR’s
23 omissions were “particularly troubling” because:

24 [t]he project under review involves long-term, planned expenditures of billions of
25 taxpayer dollars. No one can reasonably suggest it would be prudent to go forward
26 with planned expenditures of this magnitude before the public and decision makers
27 have been provided with all reasonably available information bearing on the
28 project’s impacts to health, safety and welfare of the region’s inhabitants.

1 The Court of Appeal's holding applies with even greater force here in light of the numerous and
2 significant deficiencies in the PEIR's analysis of the CDFA's exponentially larger, costlier and
3 more harmful statewide Program. The Court should therefore issue a peremptory writ of mandate
4 and grant Petitioners' requests for declaratory and injunctive relief, vacating Respondents'
5 approvals of the PEIR and Program and remanding this matter for further consideration consistent
6 with this Court's directives.

7 **THE PARTIES**

8 7. Petitioner and Plaintiff ENVIRONMENTAL WORKING GROUP ("EWG") is a
9 non-profit corporation formed pursuant to the laws of the District of Columbia. Founded in 1993,
10 EWG has offices in Oakland and Sacramento, California and elsewhere in the United States, and
11 has more than 1.2 million online supporters, including over 150,000 in California. EWG's
12 mission is to protect the most vulnerable segments of the human population from health problems
13 attributed to a wide array of toxic contaminants, and to replace government policies, including
14 subsidies that damage the environment and natural resources, with policies that invest in
15 conservation and sustainable development. In order to accomplish its mission, EWG employs a
16 team of scientists, engineers, policy experts, lawyers, and others to review government data, legal
17 documents, and scientific studies and conducts its own laboratory tests to expose threats to public
18 health and the environment and find solutions. EWG actively engages in the making of laws and
19 regulations for and by the state agencies that oversee the use and disposal of potentially toxic
20 materials such as pesticides as well as the sometimes harmful materials that consumers are
21 exposed to on a daily basis in their consumer products. EWG submitted comments during the
22 public comment period in opposition to the Program and to the CDFA's certification of the PEIR.

23 8. Petitioner and Plaintiff CITY OF BERKELEY ("Berkeley") is a charter city
24 formed under and in accordance with the constitution and laws of the State of California.
25 Berkeley and its approximately 110,000 residents have a strong interest in the preservation,
26 protection, and defense of the environment and health of all Berkeley residents and visitors.
27 Berkeley submitted comments during the public comment period in opposition to the Program and
28 to the CDFA's certification of the PEIR.

1 9. Petitioner and Plaintiff CENTER FOR FOOD SAFETY (“CFS”) is a nonprofit
2 public interest organization with nearly 600,000 members nationwide and offices in California,
3 Oregon, Hawai‘i; and the District of Columbia. CFS’s mission is to protect the public’s right to
4 know how their food is produced. CFS was established for the purpose of and is dedicated to
5 protecting human health and the environment by curbing the proliferation of harmful food
6 production technologies, including increased use of pesticides and the evolution of resistant pests
7 and weeds, and instead promoting sustainable alternatives. CFS works to inform, educate, and
8 counsel its members and the public on the harm done to human health, animal welfare, and the
9 environment by industrial agriculture. CFS achieves its mission through legal petitions for
10 rulemaking, comments on agency actions, public education, grassroots organizing, media
11 outreach, and when necessary, litigation, to promote transparency and accountability in
12 government and the industrial agricultural industry. CFS submitted comments during the public
13 comment period in opposition to the Program and to the CDFA’s certification of the PEIR.

14 10. Petitioner and Plaintiff PESTICIDE ACTION NETWORK NORTH AMERICA
15 (“PANNA”) is an Oakland-based non-profit organization that serves as an independent regional
16 center for Pesticide Action Network International, a coalition of over 600 public interest
17 organizations in more than 90 countries. For more than 30 years, PANNA has worked to replace
18 hazardous and unnecessary pesticide uses with ecologically sound pest management across North
19 America. PANNA has approximately 2,700 individual members nationwide and approximately
20 90 organizational members in California. PANNA submitted comments during the public
21 comment period in opposition to the Program and to the CDFA’s certification of the PEIR.

22 11. Petitioner and Plaintiff BEYOND PESTICIDES (“BP”) is a nonprofit organization
23 headquartered in Washington, D.C. that works with allies in protecting public health and the
24 environment to lead the transition to a world free of toxic pesticides. The founders, who
25 established Beyond Pesticides in 1981, felt that without the existence of such an organized,
26 national network, local, state, and national pesticide policy would become, under chemical
27 industry pressure, increasingly unresponsive to public health and environmental concerns. The
28 organization’s primary goal is to effect change through local action, assisting individuals and

1 community-based organization to stimulate discussion on the hazards of toxic pesticides, while
2 providing information of safe alternatives. Consistent with Beyond Pesticides' mission, the
3 organization engages in advocacy, educational, and outreach efforts on behalf of its members
4 across the country, many of whom reside in California, and which address issues unique to
5 California residents and the environment. BP submitted comments during the public comment
6 period in opposition to the Program and to the CDFA's certification of the PEIR.

7 12. Petitioner and Plaintiff CALIFORNIA ENVIRONMENTAL HEALTH
8 INITIATIVE ("CEHI") is a sponsored project of Pesticide Action Network, located in California,
9 and has worked since 2008 to bring citizen advocacy and scientific research to expanding
10 awareness that protecting human and environmental health must be the first priority in all food and
11 agricultural decisions. CEHI submitted comments during the public comment period in opposition
12 to the Program and to the CDFA's certification of the PEIR.

13 13. Petitioner and Plaintiff ENVIRONMENTAL ACTION COMMITTEE OF WEST
14 MARIN ("EAC") is a 501(c)(3) Point Reyes Station-based non-profit organization founded in
15 January 1971. EAC is dedicated to the protection and appreciation of West Marin county's natural
16 resources and rural character. To achieve its mission, EAC works to protect the environmental
17 quality, wildlife, wild lands, wilderness, watersheds and marine and coastal resources in West
18 Marin. EAC has over 1200 members, the majority of whom reside in Marin County. EAC
19 submitted comments during the public comment period in opposition to the Program and to the
20 CDFA's certification of the PEIR.

21 14. Petitioner and Plaintiff SAFE ALTERNATIVES FOR OUR FOREST
22 ENVIRONMENT ("SAFE") is a California nonprofit, IRS tax exempt 501(c)(3), membership
23 corporation, headquartered in northern California's Trinity County. SAFE is a volunteer,
24 grassroots, environmental organization. SAFE's members reside in the State of California. SAFE
25 is dedicated to promoting healthy ecosystems through contemplation, education, community
26 involvement, organizing, demonstrations, activism and legal remedies. SAFE was formed in 1979
27 in response to pesticide spraying on public and private timber lands in Trinity County in northern
28

1 California. SAFE submitted comments during the public comment period in opposition to the
2 Program and to the CDFA's certification of the PEIR.

3 15. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("CBD") is a
4 non-profit public interest corporation incorporated in the state of California, with approximately
5 50,000 members and offices throughout the United States including California offices in San
6 Francisco, Los Angeles, Joshua Tree, Sacramento, and Humboldt and Sonoma Counties. For over
7 25 years CBD and its members have been dedicated to protecting imperiled species and their
8 habitats through science, policy, education, and environmental law. CBD's Toxics and
9 Endangered Species Campaign seeks to reduce the threats to the environment and public health
10 from pollution and contamination with a particular emphasis on the impacts of pesticide use on
11 imperiled species. CBD members reside and own property in California, and use areas affected by
12 the Program for recreational, wildlife viewing, scientific, and educational purposes, and intend to
13 continue these uses as permitted. CBD submitted timely comments during the public comment
14 period in opposition to the Program to the CDFA's certification of the PEIR.

15 16. Petitioner and Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is
16 a non-profit organization formed in 1996 to protect people from toxic chemicals. CEH has about
17 10,000 active supporters, and about 3,000 of CEH's members live in California. CEH submitted
18 comments during the public comment period in opposition to the Program and to the CDFA's
19 certification of the PEIR.

20 17. Petitioner and Plaintiff CALIFORNIANS FOR PESTICIDE REFORM ("CPR")
21 ("CPR") is a non-profit, statewide coalition, headquartered in Oakland, California, whose mission
22 is to protect public health, improve environmental quality and support a sustainable and just
23 agricultural system by building a diverse movement across California to change statewide and
24 local pesticide policies and practices. Founded in 1996, CPR is made up of more than 190 member
25 organizations across California, including public health, children's health, educational and
26 environmental advocates; clean air and water organizations; health practitioners; environmental
27 justice groups; labor organizations; farmers; and sustainable agriculture advocates; all interested in
28 shifting the way pesticides are used in California. CPR engages thousands of community members

1 around California through our organizational members. CPR submitted comments during the
2 public comment period in opposition to the Program and of the CDFA's certification of the PEIR.

3 18. Petitioner and Plaintiff MOMS ADVOCATING SUSTAINABILITY (“MOMAS”)
4 is a Bay Area based non-profit organization founded in 2008, committed to creating healthy
5 communities for children by reducing their exposure to household and environmental toxins.
6 MOMAS works primarily through education and outreach to mothers and families, and also to
7 policy makers, helping them to make better choices and providing information about effective
8 alternatives. MOMAS has approximately 600 members, primarily based in the San Francisco Bay
9 Area. MOMAS submitted comments during the public comment period in opposition to the
10 Program and to the CDFA’s certification of the PEIR.

11 19. Respondent and Defendant CALIFORNIA DEPARTMENT OF FOOD AND
12 AGRICULTURE is agency of the State of California. CDFA is tasked with protecting and
13 promoting agriculture within the State of California. CDFA is both the Program proponent and
14 the “lead agency” that prepared and certified the Program’s PEIR.

15 20. Respondent and Defendant KAREN ROSS, is the Secretary for the CDFA. In her
16 official capacity, the Secretary is the person responsible for oversight and management of CDFA.
17 Further, the Secretary certified and approved the PEIR and is therefore a “decision-making”
18 agency within the meaning of CEQA Guidelines section 15356.

19 21. The true names and capacities of the Respondents and Defendants named here as
20 DOES 1 through 100, inclusive, are presently unknown to Petitioners. As such, Petitioners have
21 sued these Respondents and Defendants by fictitious names, and Petitioners will seek to amend
22 this Petition to show their true names and capacities when ascertained.

23 JURISDICTION AND VENUE

24 22. This Court has jurisdiction to issue a writ of mandate to set aside Respondents’
25 actions and decisions relating to the PEIR and to compel Respondents to comply with CEQA
26 under California Code of Civil Procedure section 1085 and California Public Resources Code
27 section 21168.5. This Court has jurisdiction to issue an order for Declaratory Relief pursuant to
28

1 California Code of Civil Procedure section 1060. This Court has jurisdiction to issue an order for
2 injunctive relief pursuant to California Code of Civil Procedure section 525 et seq.

3 23. Venue is proper in Alameda County under California Code of Civil Procedure
4 section 393 and 401 and California Government Code section 955.3.

5 **NOTICE REQUIREMENTS AND TIMING**

6 24. CDFA filed a Notice of Determination regarding its certification of the PEIR on
7 December 24, 2014.

8 25. Petitioners filed this action within 30 days of CDFA's filing of that Notice of
9 Determination as required by California Public Resources Code section 21167(c).

10 26. On January 21, 2015, prior to commencing this action, Petitioners provided
11 Respondents with written notice of Petitioners' intent to commence this action under CEQA, and
12 thus Petitioners have complied with the requirements of California Public Resources Code section
13 21167.5. Copies of that written notice and proof of service are attached as Exhibit A.

14 27. On January 22, 2015, Petitioners filed a notice of their election to prepare the
15 record of proceedings, pursuant to Public Resources Code section 21167.6(b)(2). A copy of that
16 notice is attached as Exhibit B. Petitioners will personally serve Respondents with notice.

17 28. On January 22, 2015, Petitioners provided to the Attorney General of the State of
18 California notice of the filing of this Petition and a copy thereof, and thus Petitioners have
19 complied with the requirements of California Public Resources Code section 21167.7 and
20 California Code of Civil Procedure section 388. A copy of that notice is attached as Exhibit C.

21 29. On January 22, 2015, Petitioners filed and served a Request for Hearing, and thus
22 complied with Public Resources Code section 21167.4. A copy of that notice is attached as
23 Exhibit D.

24 **ADDITIONAL STANDING ALLEGATIONS**

25 30. Petitioners and their respective members and residents live in the areas included in,
26 and that will otherwise be affected by the Program, and use the air, waters and lands affected by
27 the Program for recreational, educational, scientific, conservation, aesthetic and spiritual purposes.
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1 significant levels, and 4) ensuring that Respondents afford the public and affected agencies with
2 the opportunity to review and comment on potentially significant project impacts, and receiving a
3 meaningful and complete response to any such comments on such issues, prior to the approval of
4 such Program or projects.

5 36. Issuance of the relief requested in this Petition and Complaint will result in the
6 enforcement of important rights affecting the public interest. Compelling Respondents to
7 complete a legally adequate analysis of the Program would protect public health and natural
8 resources, require Respondents to properly and publicly disclose and analyze all of the Program's
9 potentially significant, adverse environmental effects, and require Respondents to implement all
10 feasible mitigation measures or alternatives that would reduce or avoid such impacts.

11 37. The necessity and financial burden of enforcement are such as to make an award of
12 attorneys' fees appropriate in this proceeding. Absent enforcement by Petitioners, the Program
13 might otherwise be deemed valid despite its legally and factually inadequate disclosures, analysis,
14 conclusions, mitigation measures, and alternatives, among other things, and, as a result, potentially
15 significant, adverse environmental effects might otherwise have evaded legally adequate
16 environmental review and mitigation in accordance with the California Legislature's policy, in
17 adopting CEQA, of affording the greatest protections to the environment within the scope of the
18 statute.

19 38. Petitioners have served a copy of this Petition on the Attorney General's office to
20 give notice of Petitioners' intent to bring this proceeding as a private attorney general under Code
21 of Civil Procedure section 1021.5, which notice attached as Exhibit C

22 **FACTUAL BACKGROUND**

23 **A. The Program and PEIR**

24 39. While not entirely clear in the PEIR's Project Description, the Program purports to
25 supersede in part the CDFA's existing Statewide Program of regulatory activities to address plant
26 pests. Program activities may occur in any urban, residential, commercial or agricultural
27 community or location throughout the state of California (and beyond) where a plant pest may be
28 found, including at schools, hospitals, nursing homes, organic farms and other sensitive locations.

1 40. The Program authorizes physical, biological and chemical pest “management
2 activities.” Only a small subset of the chemical pesticides the CDFA may use or oversee under
3 the Program are evaluated in the PEIR. Chemical pesticides may be applied under the Program by
4 a variety of methods, including traps, spot applications, soil applications, fumigation applications,
5 and aerial spray applications.

6 41. The Program further implements a variety of vague, unenforceable and ineffectual
7 Management Practices (“MPs”) for chemical spray applications that are carried out by the CDFA
8 and growers under the Program. These include:

- 9 • “Identify and make plans to avoid streamside management areas and surface
10 water;”
- 11 • “Consider integrated pest management methods designed to minimize the
12 scale and number of pesticide applications....”;
- 13 • “Comply with the Pesticide label;”
- 14 • “Delay or do not apply foliar sprays if wind speeds are over 10 miles per
15 hour;”
- 16 • “Delay or do not apply foliar spray treatments if there is a 40% chance or
17 higher of rain forecast to occur 24 hours before or after planned application;”
- 18 • “Use buffer zones where applicable to protect sensitive areas, such as
19 bodies of water, critical habitat for threatened and endangered species, and other identified
20 sensitive areas;”
- 21 • “Do not make direct application to water bodies;” and
- 22 • “Make sure that the aircraft pilot is in radio communication with the
23 Proposed Program personnel on the ground; to verify wind speed and direction and location of
24 non-target sites, including water bodies, people, vehicles, and buildings.”

25 42. The PEIR is a program EIR. The PEIR’s Responses to Comments thus explain that
26 it “is not intended to provide exhaustive site-specific coverage of all future activities potentially
27 undertaken under the Proposed Program.” But contrary to that response, the CDFA’s Statement of
28 Overriding Considerations in support of the Program states:

1 [o]ne of CDFA's intentions in preparing the PEIR is to minimize the amount of
2 duplicate information that may be required in the future at a project-level
3 environmental review by dealing as comprehensively as possible at the program
4 level with cumulative impacts, regional considerations, and similar overarching
5 issues. Substantial efforts have been made to provide project-level detail for these
activities where it is feasible to do so. To the extent that the potential impacts of
the activities have been addressed in the PEIR, no additional CEQA compliance
would be necessary.

6 The CDFA therefore intends the PEIR to support its stated goal of "rapid response by streamlining
7 project-level implementation activities..." The PEIR does not clarify, however, which future
8 activities under the Program have been analyzed at a "project-level" as compared to "program-
9 level."

10 43. The CDFA's "streamlining" strategy is implemented through the PEIR's "Tiering
11 Strategy," which governs the CDFA's internal assessment of whether subsequent activities were
12 adequately addressed in the PEIR. As described previously, however, the Tiering Strategy does
13 not commit the CDFA to subsequent detailed site-specific environmental analysis prior to site-
14 specific Program implementation. Instead, the Tiering Strategy directs the CDFA's staff to carry
15 out "substantially similar" Program activities without consideration, much less environmental
16 analysis of site-specific environmental conditions, such as the location of sensitive resources or
17 sensitive receptors.

18 **B. The CDFA's Preparation and Certification of the PEIR**

19 44. On January 23, 2011, the CDFA issued a Notice of Preparation ("NOP") of the
20 PEIR.

21 45. On August 25, 2014, the Draft PEIR was circulated for public review. The
22 comment period concluded on October 31, 2014. The CDFA received approximately 15,700
23 letters during the comment period, and at least as many following the close of the comment
24 period.

25 46. On or about December 14, 2014, the CDFA released the Final PEIR, which
26 included "Master Responses" regarding 18 topics as well as individual responses to only 39
27 comment letters.

28

1 detailed, site-specific information may not be feasible but can be deferred....as long as deferral
2 does not prevent adequate identification of significant effects of the planning approval at hand.”;
3 (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008)
4 43 Cal. 4th 1143, 1176 [approving program EIR where agency “committed itself to conduct
5 individual environmental assessments in accordance with CEQA on a project-by-project basis for
6 each of the individual projects.”] citing *Al Larson Boat Shop, Inc. v. Board of Harbor*
7 *Commissioners of the City of Long Beach* (1993) 18 Cal. App. 4th 729, 742.)

8 But far from committing the CDFA to detailed, site specific environmental assessments
9 prior to implementing subsequent Program activities, the Tiering Strategy instructs the CDFA’s
10 staff to carry out “substantially similar” subsequent activities with no further environmental
11 review, public notice or opportunity to comment, without consideration, much less detailed
12 analysis of site-specific environmental conditions.

13 (2) The Tiering Strategy reveals the CDFA’s intent to not file a NOD
14 following its decisions to carry out subsequent Program activities deemed adequately addressed
15 under the PEIR. It therefore violates CEQA’s public notice requirements. (Pub. Res. Code
16 §21108; *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48
17 Cal. 4th 32, 56.)

18 **B. The Project Description Is Vague, Incomplete and Misleading**

19 (1) CEQA requires that an EIR include an accurate project description,
20 and that the nature and objective of a project be fully disclosed and fairly evaluated in an EIR.
21 (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 646, 655.) An
22 EIR should contain a “sufficient degree of analysis to provide decision-makers with information
23 which enables them to make a decision which intelligently takes account of environmental
24 consequences.” (CEQA Guidelines, § 15151.)

25 (2) The PEIR’s project description is deficient because numerous details
26 of the proposed Program are missing, including the existing environmental conditions of specific
27 locations where treatments will take place, the timing and intensities of those treatments, the
28 criteria for pest management decisions, whether and when treatments would take place at schools

1 or near sensitive receptors such as the chronically ill. Other deficiencies include, without
2 limitation, the following:

- 3 a. the PEIR does not provide maps or other clear guidance
4 regarding where aerial spraying may occur;
- 5 b. the pest rating process is insufficiently described;
- 6 c. pest management activities are not adequately described, and
7 the criteria for determining pest management responses, and changes to these approaches, are not
8 sufficiently defined. These determinations are especially important in light of the PEIR statement
9 that the Program's environmental impacts may increase where multiple management activities
10 occur simultaneously;
- 11 d. the PEIR does not explain its determination to pursue pest
12 eradication strategies in light of the extreme difficulty of achieving this goal, nor does the PEIR
13 even acknowledge the factual evidence of this difficulty;
- 14 e. the criteria for determining the duration of pest management
15 projects are undefined. As no exit strategy is defined for projects, the PEIR effectively authorizes
16 indefinite treatments. However, the PEIR's Human Health Risk Assessment ("HHRA") makes
17 contrary assumptions about the potential length of exposures to project pesticides. For example,
18 in a residential setting, the downward bystander [DWB] was assumed to have the potential to be
19 exposed for a duration of 3 years;
- 20 f. the pest management practices ("MPs") described in the
21 PEIR are generic, providing only a few general guidelines for addressing specific local site
22 conditions, such as noting water bodies, storm drains, wind and other weather conditions and
23 "using buffer zones where applicable to protect sensitive areas." These MPs are not adequate to
24 inform the residents of any particular community about the specific conditions that the CDFA will
25 (or must) take into account when treating for pests in that area, such as the presence of sensitive or
26 endangered species, waterbodies, wetlands, or drinking water sources; or sites such as schools,
27 hospitals, and nursing homes where sensitive individuals might reside. Nor are these MPs
28 adequate to enable a full evaluation of potential localized environmental impacts;

1 g. the PEIR inaccurately describes the Program as an integrated
2 pest management program (“IPM”). The Program’s pest management approach is not consistent
3 with the primary goal of IPM, long-term prevention of pest problems by creating environments
4 that are inhospitable to pests. The PEIR’s project description is therefore misleading and factually
5 incorrect;

6 h. the PEIR’s descriptions of specific pest control measures and
7 their justifications are impermissibly vague. For example, for the projects that currently entail
8 chemical applications, the chemicals and application methods that may be used are given without
9 any indication of which are used, when, where, or why;

10 i. the PEIR improperly segments and piecemeals portions of its
11 program from the PEIR. The PEIR fails to include and analyze the whole of the Statewide
12 Program and is unclear what prior environmental documents are relied upon in this PEIR. Even
13 though the PEIR expressly states that its scope is CDFA’s entire Statewide Program activities, the
14 PEIR excludes some ongoing plant pest projects with no explanation. The PEIR fails to provide
15 any explanation of how these programs are not part of CDFA’s Statewide Program activities;

16 j. the PEIR references and incorporates prior environmental
17 documents for several plant pests, but it is unclear exactly which portions of these prior documents
18 remain in force, are considered supplemented by the PEIR, or no longer remain in force;

19 k. the PEIR further unlawfully piecemeals and excludes
20 analysis of the CDFA’s emergency response program, which is fundamentally intertwined with
21 the CDFA’s Statewide Program; and

22 l. the PEIR fails to list all reasonably foreseeable future
23 approvals required, and all responsible trustee agencies required as part of the Program.

24 **C. The PEIR Fails To Adequately Define The Program’s Baseline**

25 (1) In order to determine whether a project’s impacts will be significant,
26 CEQA requires lead agencies to compare the impact of a proposed project to the “physical
27 environmental conditions in the vicinity of the project, as they exist at the time the notice of
28 preparation is published.” These conditions serve as the project’s “baseline.” (CEQA Guidelines,

1 § 15125.) The description of the project's baseline ensures that the public has "an understanding
2 of the significant effects of the proposed project and its alternatives." (CEQA Guidelines, §
3 15125(a).) Accurately determining the baseline environmental conditions is crucial to accurately
4 evaluating a project's impact.

5 (2) The PEIR's description of baseline conditions is alternatively
6 incomplete and inaccurate, infecting and invalidating the entirety of the PEIR's environmental
7 analysis. The flaws include the following:

8 a. the PEIR relies on the quantity of *reported* commercial uses
9 of pesticides as the PEIR's environmental baseline from which to measure the Program's potential
10 direct and cumulative environmental impacts. Unreported pesticide uses, however, include home
11 and garden use and most industrial uses, representing approximately two-thirds of the pesticide
12 active ingredients sold each year. The PEIR unlawfully fails to make reasonable projections or
13 forecasts regarding the amounts of unreported pesticide use, resulting in a truncated and grossly
14 understated baseline amount of actual pesticide use under exiting condition;

15 b. while the PEIR notes that many of the activities that would
16 be conducted under the Program are already ongoing, the PEIR does not explain which of these
17 activities were considered as part of the baseline, and which are considered additional Program-
18 related impacts;

19 c. the PEIR fails to adequately describe existing groundwater
20 conditions, including the quantity or quality of areas that would be affected by the proposed
21 Program. For example, the PEIR fails to state which groundwater basins or aquifers are
22 contaminated, which are contaminated by pesticides or pesticide toxicity, what are the factors that
23 led to this contamination, what have been the drinking water or agricultural water supply
24 consequences for areas with pesticide-contaminated groundwater, and what are projections for
25 future groundwater demands, and what remediation efforts have been attempted, at what cost, and
26 to what success;

27 d. the PEIR fails to adequately describe existing surface water
28 conditions, such as specifically where pesticide contaminated surface water exists, how these

1 waterways came to be contaminated, which pesticides caused contamination, and to what degree,
2 and what environmental and public health impacts have resulted;

3 e. the PEIR fails to adequately describe hydrological site
4 conditions where applications could occur; and

5 f. the PEIR fails to adequately describe baseline air quality
6 conditions. The PEIR without justification selected 2008 through 2010 as the years from which
7 the baseline criteria for pollutants would be developed. Even for those years, significant data is
8 missing.

9 **D. The PEIR Fails To Adequately Analyze Significant Environmental**
10 **Impacts**

11 (1) CEQA requires that an EIR describe the proposed project's
12 significant environmental effects. Each must be revealed and fully analyzed in the EIR. (Pub.
13 Res. Code § 21100(b), CEQA Guidelines § 15126.2(a).) "Designating an EIR as a program
14 EIR....does not by itself decrease the level of analysis required in the EIR. All EIRs must cover
15 the same general content. The level of specificity of an EIR is determined by the nature of the
16 project and the rule of reason, rather than any semantic label accorded to the to the EIR. [citation]
17 Consequently, in considering a challenge to a program EIR, it is unconstructive to ask whether the
18 EIR provided project-level as opposed to program-level detail and analysis. Instead, we focus on
19 whether the EIR provided decision makers with sufficient analysis to intelligently consider the
20 environmental consequence of the project. [citation]." (*Cleveland National Forest Foundation*,
21 *supra*, 231 Cal. App. 4th at 1067-1068.)

22 (2) The PEIR relies on inaccessible and overly-technical information
23 contained in CDFG's "dashboard database," and not presented or summarized in the PEIR, as a
24 substitute for reasoned analysis required to be in the PEIR to support informed public and agency
25 decision-making.

26 (3) The PEIR fails to provide decision makers with sufficient analysis in
27 numerous respects including, without limitation, the following:

28 a. Biological Impacts:

1 (i) the PEIR concludes that the Program's impacts are
2 less than significant because the Program would be required to comply with the provisions of any
3 adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved
4 local, regional, or State habitat conservation plan. The PEIR, however, does not even identify
5 such plans, much less evaluate the Program's ability to comply with them. This improperly defers
6 both the analysis of impacts as well as the development of mitigation measures to a future process
7 outside of public CEQA review;

8 (ii) the PEIR provides inadequate information or analysis
9 to support its conclusion that both physical and chemical traps and lures would have no significant
10 impacts on sensitive species;

11 (iii) the PEIR fails to adequately analyze the admitted
12 impacts to biological resources by assuming that spraying would "generally" occur in areas away
13 from native habitat and sensitive biological resources. The PEIR fails to adequately disclose and
14 analyze the Program impacts of pesticide drift and other indirect impacts;

15 (iv) the PEIR fails to adequately disclose and analyze the
16 Program's significant impacts on sensitive species. The assertion in the PEIR that impacts would
17 be less than significant contradicts the data provided in the Ecological Risk Assessment ("ERA");

18 (v) the PEIR's analysis of impacts on pollinators is
19 inadequate. The ERA determined that the limited scenarios it reviewed could result in risk that
20 would exceed the level of concern for pollinators. The PEIR concludes, however, that various
21 avoidance and minimization measures, including the MPs, would minimize potential adverse
22 impacts to less than significant. No actual analysis of how the MPs would reduce or avoid
23 significant impacts is provided. Additionally, the "pollinator measures" included in Appendix J,
24 attachment 1, are not evaluated in the PEIR. A report buried in an appendix is not a substitute for
25 good faith reasoned analysis;

26 (vi) the PEIR's analysis of impacts on wetlands is
27 insufficient. The PEIR asserts that chemical treatments on sensitive natural communities or
28 wetlands would have no impacts because "Proposed Program activities would not occur within

1 wetlands and other aquatic or sensitive natural communities.” No information is provided on how
2 this determination was reached. The determination of what area constitutes a “wetland” can
3 include a complex evaluation of many factors. The PEIR’s conclusion further fails to consider and
4 analyze the Project’s indirect impacts to wetlands and other sensitive communities from pesticide
5 drifts and runoffs;

6 (vii) the ERA is deficient in numerous respects. The ERA
7 acknowledges that its models in many cases are not capable of modeling all of the complex fate
8 and transport processes that can occur once chemicals are released into the environment and that
9 toxicity data were not always available for all taxonomic groups. This was most common for
10 amphibians and reptiles. Other deficiencies in the ERA include: failure to analyze the
11 environmental impacts of numerous proposed Program activities “due to inability to quantify
12 risk,” failure to analyze numerous exposure pathways due to lack of available data, failure to
13 analyze the full range of pesticides used in the proposed Program, including inert ingredients, and
14 unsubstantiated and illogical assumptions about exposure durations.

15 (vii) the PEIR fails to meaningfully assess impacts to
16 aquatic species, relying on pesticide benchmark indicators for impacts to human health, where
17 pesticide benchmark indicators for aquatic species provide for more stringent and applicable
18 standards.

19 b. Water Impacts

20 (i) the PEIR fails to adequately analyze impacts on
21 surface waters. The PEIR fails to describe each water body that will be impacted and fails to
22 evaluate Program activities that will impact these undescribed water bodies. The PEIR fails to
23 distinguish between direct and indirect discharges, and fails to provide an adequate description of
24 indirect pesticide loading through runoff, erosion, track off, and other movement of pesticides into
25 waters. The PEIR admits that “because of the diffuse nature of non-point sources, they are
26 difficult to regulate and are the leading cause of water quality issues in the US.” Yet, the PEIR
27 concludes that virtually none of its pesticide applications would reach, much less adversely affect,
28 surface waters;

1 (ii) The PEIR improperly relies on CDFA's NPDES
2 permit requirements to reduce or avoid significant water quality impacts as a substitute for actual
3 analysis of the Program's potential impacts. Compliance, however, does not ensure less than
4 significant impacts; analysis must be performed. Moreover, the Program's MPs conflict with
5 NPDES permit requirements. Additionally, the Program provides no assurance that private
6 applicators will comply with the NPDES permit, especially given that required MP's conflict with
7 NPDES permit requirements;

8 (iii) the ERA fails to model or otherwise analyze pesticide
9 discharges to waters. It also fails to meaningfully consider impacts on drinking water supplies.
10 The PEIR simply states that drinking water supplies will be avoided, with no supporting
11 information, analysis or binding Program commitments. Many aboveground streams, springs and
12 sources supply drinking water to residents and farms in rural counties, but the PEIR fails to
13 individually identify these sources in its baseline description, much less analyze potential impacts;

14 (iv) the PEIR fails to analyze how MPs will minimize
15 pesticide discharges to waters;

16 (v) the PEIR's finding of less than significant impacts is
17 unsupported because the PEIR shows that numerous pesticides will have significant impacts on
18 waters;

19 (vi) the PEIR fails to consider impacts from Proposition
20 65 listed chemicals;

21 (vii) the PEIR fails to analyze sediment toxicity;

22 (viii) the PEIR fails to adequately analyze impacts on
23 groundwater;

24 (ix) the PEIR fails to analyze cumulative impacts to
25 waterbodies;

26 (x) the PEIR discounts its own model results showing
27 potentially significant impacts to waters; and
28

1 (xi) the PEIR provides internally contradictory
2 conclusions that Program pesticides will impact impaired waterbodies with no remaining
3 assimilative capacity, yet concluding that impacts to impaired waterbodies would be less than
4 significant.

5 c. Air Quality Impacts:

6 (i) the PEIR fails to adequately describe each air district
7 that will be impacted and meaningfully evaluate the impacts of Program activities;

8 (ii) the PEIR fails to account for emissions from various
9 equipment used when applying pesticides;

10 (iii) the PEIR fails to adequately evaluate the impacts of
11 Toxic Air Contaminants (“TACs”) on non-sensitive receptors and local populations. The PEIR
12 also fails to quantify the exposure to fossil-fueled application equipment emissions containing
13 diesel particulate matter (“PM”) or TACs.

14 d. Human Health Impacts

15 (i) the PEIR’s Human Health Risk Assessment
16 (“HHRA”) is legally inadequate and fails to inform the public about the hazards of the proposed
17 Program. The HHRA contains numerous limitations and omissions. These deficiencies include
18 the following:

19 (ii) the HHRA improperly modified risk scenarios to
20 ensure results below a threshold of significance without specifying mitigation measure to enforce
21 those scenarios;

22 (iii) the HHRA’s definitions of modeled receptors omit
23 critical age and population groups and do not address unique aspects of children’s risk exposures.
24 For example, in defining receptors for the risk analysis, the HHRA excludes many categories of
25 individuals who realistically would be exposed to Program pesticides without any basis for these
26 exclusions. The HHRA’s modeling also includes unreasonable and unsubstantiated assumptions,
27 such as children under the age of 2 would have no exposure to drift from pesticide active or inert
28 ingredients because they “cannot access treated areas.” The HHRA’s modeling further excludes

1 consideration of impacts to adults over the age of 40. The PEIR purports to justify this modeling
2 based upon reference to EPA studies, none of which are contained nor adequately identified or
3 summarized within the PEIR in violation of CEQA's requirements;

4 (iv) the HHRA fails to analyze valid exposure pathways
5 of concern such as exposures to Program pesticide residues on purchased food;

6 (v) the HHRA relies upon numerous invalid and
7 unsubstantiated assumptions, including regarding exposure durations;

8 (vi) the HHRA fails to address the exceedance of level of
9 concern for methyl bromide exposure; and

10 (vii) the HHRA omits several existing baseline pest
11 programs from its analysis. The HHRA further fails to analyze cumulative impacts from multiple
12 programs.

13 e. Farming Impacts

14 (i) the PEIR's conclusion that the Program will not
15 disrupt organic farming is unsupported;

16 (ii) the PEIR improperly truncates its review of
17 significant impacts on organic farms by analyzing only whether organic farms would be converted
18 to non-agricultural use. This analysis ignores the many significant environmental and economic
19 impacts on organic farm from pesticide drift, including disrupting the fine-tuned ecological
20 balance of insects, pollinators, and soil microbes cultivated by these farms.

21 **E. The PEIR Fails To Adequately Evaluate Cumulative Impacts**

22 (1) CEQA requires that the lead agency analyze cumulative impacts.
23 (Pub. Res. Code § 21083(b)(2); CEQA Guidelines § 15064(h)(1).) A cumulative impact is an
24 impact created as a result of the project when evaluated together with other past, present, and
25 reasonably foreseeable future projects causing related impacts. In performing a cumulative
26 impacts analysis, the EIR must assess the significance of the incremental addition of a project to
27 the combined individual effects of one or more separate projects. The analysis should provide
28

1 sufficient data to ensure that the cumulative effects are identified and disclosed, and should make a
2 good faith and reasonable effort at disclosing all cumulative impacts.

3 (2) The PEIR's cumulative impacts analysis is deficient in several
4 respects, including the following:

5 a. the PEIR describes CDFA's and other agencies' pesticide
6 programs in vague terms, and fails to provide basic information regarding the types, amounts or
7 locations of pesticide use from these programs;

8 b. the PEIR's cumulative impacts analysis is rendered invalid
9 by the deficiencies in the PEIR's baseline assumptions, including the pesticide use baseline
10 relying solely on commercially reported uses, and a lack of baseline information regarding past
11 Program impacts, and/or related environmental impacts from other pesticide sources;

12 c. the PEIR's cumulative impacts analysis is rendered invalid
13 by the deficiencies in the PEIR's analysis of significant Program impacts, by understating or
14 failing altogether to evaluate the Program's incremental effects, for example, but not limited to,
15 impacts to waterbodies already impaired by pesticide toxicity; and

16 d. the PEIR's conclusions regarding cumulative impacts are
17 unsupported. For example, the PEIR acknowledges that multiple sources of TACS may exist in a
18 local area that could potentially result in a cumulatively significant impact, but then concludes
19 without supporting evidence that the Program would not contribute to cumulatively considerable
20 toxic air contaminants. Similarly, the PEIR's conclusion that the Program's cumulative health
21 effects are less than significant is unsupported by evidence.

22 **F. The PEIR's Mitigation Measures are Legally Inadequate**

23 (1) "An EIR shall describe feasible measures which could minimize
24 significant adverse impacts." (CEQA Guidelines § 15126.4(a)(1).) An EIR may not defer the
25 formulation of mitigation measures to a future time, but mitigation measures may specify
26 performance standards that would mitigate significant effects and may be accomplished in in more
27 than one specified way. "Impermissible deferral of mitigation measures occurs when an EIR puts
28 off analysis or orders a report without either setting standards or demonstrating how the impact

1 can be mitigated in the manner described in the EIR.” (*Preserve Wild Santee v. City of Santee*
2 (2012) 210 Cal. App. 4th 260, 280-281.)

3 (2) The PEIR improperly defers analysis and formulation of mitigation
4 measures. For example, BIO-CHEM-2 improperly defers identification of potential impacts to
5 special status species, vaguely provides that future “treatment plans” shall be prepared, fails to
6 provide adequate performance standards or enforcement mechanisms, and provides no evidence
7 that such efforts would mitigate significant impacts. Similarly fatal deficiencies exist regarding
8 Mitigation Measures HAZ-GEN-4a through HAZ-GEN-4c and HAZ-CHEM 1a though HAZ-
9 CHEM-3 hazardous material impacts, and WQ-CHEM -2, WQ-CHEM-5 and WQ-CUM-1
10 regarding water quality direct and cumulative impacts.

11 (3) The PEIR unlawfully conceals mitigation measures as components
12 of the Program. For example, the HHRA indicates that when calculating the risk of the Program
13 to human health, the Risk assessment made “one or more reasonable changes to the application
14 technique or method” or changed the “assumptions on receptor exposure,” resulting in “the
15 estimated risk being reduced below [a level of concern].” Similarly, the PEIR includes MPs
16 within the Program’s project description, yet relies on these project components as mitigation
17 measures, all while acknowledging that no reduction in Program impacts from implementing MPs
18 were modeled.

19 **G. The PEIR’s Project Alternatives Analysis Is Inadequate**

20 (1) The PEIR must “consider a reasonable range of potentially feasible
21 alternatives that will foster informed decision making and public participation.” (CEQA
22 Guidelines. § 15126.6.)

23 (2) Rather than presenting a good faith, reasonable range of alternatives,
24 the PEIR (a) dismisses many viable, less toxic pest management alternatives based on one
25 program goal, “eradication;” (b) presents an overly simplified and misleading alternatives
26 analysis; and (c) fails to present and analyze a superior integrated pest management approach.

27 50. The CDFA prejudicially abused its discretion and failed to proceed in the manner
28 required by law in certifying the PEIR. The PEIR’s errors and omissions precluded informed

1 decision making and informed public participation, thereby thwarting the statutory goals of the
2 EIR process.

3 **SECOND CAUSE OF ACTION**

4 **(Declaratory Relief)**

5 51. Petitioners incorporate by reference the foregoing paragraphs as if fully set forth in
6 this paragraph.

7 52. An actual controversy exists between the parties. Petitioners contend that
8 Respondents have violated CEQA and must vacate and set aside their approvals of the Program
9 and PEIR. These violations include, without limitation, the PEIR's Tiering Strategy under which
10 the CDFA intends to carry out subsequent activities under the Program without consideration
11 and/or detailed analysis of site specific environmental conditions, and without providing public
12 notice of such determinations by filing an NOD. A judicial resolution of this controversy is
13 necessary and appropriate.

14 **THIRD CAUSE OF ACTION**

15 **(Stay and Injunctive Relief)**

16 53. Petitioners incorporate by reference the foregoing paragraphs as if fully set forth in
17 this paragraph.

18 54. Respondents' failure and refusal to comply with CEQA threatens to cause
19 Petitioners imminent and irreparable injury. In the absence of injunctive relief, implementation of
20 the Program will cause irreparable harm to the public and the environment as previously described
21 and cause permanent harm to Petitioners and their respective members and residents, as well as
22 other citizens of California.

23 55. Petitioners have no plain, speedy, and adequate remedy at law because monetary
24 damages cannot be ascertained and Petitioners and the public cannot be compensated for the
25 environmental degradation or adverse public health effects that will be caused by the Program.

26 **WHEREFORE**, Petitioners pray for relief as follows:

- 27 1. That this Court issue a peremptory writ of mandate:

1 a. Commanding Respondents to set aside their certifications of the
2 PEIR and to prepare a revised PEIR and otherwise comply with CEQA in any subsequent action
3 taken to approve the Program;

4 b. Commanding Respondents to immediately suspend all activities in
5 furtherance of the Program;

6 c. Commanding Respondents to set aside their approvals of the
7 Program; or alternatively, stay further activity in support of the Program pending remand to the
8 Respondent agencies for compliance with the directives of this Court.

9 2. For a temporary, preliminary and permanent injunction and/or stay and
10 other injunctive relief, restraining Respondents from taking any further actions to carry out the
11 Program pending the outcome of this litigation;

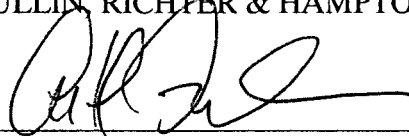
12 3. For an award of Petitioners' costs incurred in bringing this action, and
13 reasonable attorneys' fees pursuant to Code of Civil Procedure Section 1021.5, or as otherwise
14 authorized by law; and

15 4. For such other relief as the Court deems just and proper.

16 Dated: January 22, 2015

17 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

18 By



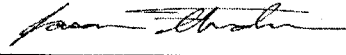
19
20 ARTHUR J. FRIEDMAN

21 Attorneys for ENVIRONMENTAL WORKING
22 GROUP; CITY OF BERKELEY; CENTER FOR
23 FOOD SAFETY; PESTICIDE ACTION NETWORK
24 NORTH AMERICA; BEYOND PESTICIDES;
25 CALIFORNIA ENVIRONMENTAL HEALTH
26 INITIATIVE; ENVIRONMENTAL ACTION
27 COMMITTEE OF WEST MARIN; SAFE
28 ALTERNATIVES FOR OUR FOREST
ENVIRONMENT

1 Dated: January 22, 2015

2 AQUA TERRA AERIS LAW GROUP

3
4 By



5
6 JASON R. FLANDERS

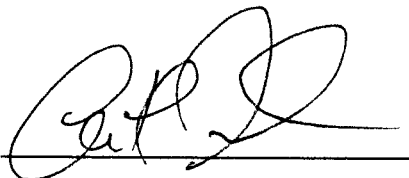
7 Attorneys for
8 CENTER FOR BIOLOGICAL DIVERSITY,
9 CENTER FOR ENVIRONMENTAL HEALTH,
10 CALIFORNIA ENVIRONMENTAL HEALTH
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12 REFORM, MOMS ADVOCATING
13 SUSTAINABILITY
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VERIFICATION

I, Arthur Friedman, am counsel of record for certain Petitioners. I sign for Petitioners absent from the county of counsel and/or because facts contained in the Petition are within the knowledge of counsel. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22 day of January, 2015, in San Francisco, California.

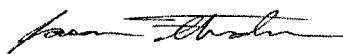


Arthur Friedman

VERIFICATION

I, Jason Flanders, am counsel of record for certain Petitioners. I sign for Petitioners absent from the county of counsel and/or because facts contained in the Petition are within the knowledge of counsel. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22 day of January, 2015, in Oakland, California.



Jason Flanders