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EARTH FOUNDATION; MOTHERS OF MARIN AGAINST
10 THE SPRAY; STOP THE SPRAY EAST BAY; CITY OF
ALBANY; CITY OF BERKELEY; CITY OF RICHMOND;
11 CENTER FOR ENVIRONMENTAL HEALTH;
CALIFORNIANS FOR PESTICIDE REFORM; PESTICIDE
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18 SAN FRANCISCO

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA

21 OUR CHILDREN'S EARTH FOUNDATION;
22 MOTHERS OF MARIN AGAINST THE SPRAY;
STOP THE SPRAY EAST BAY; CITY OF
23 ALBANY; CITY OF BERKELEY; CITY OF
RICHMOND; CITY AND COUNTY OF SAN
24 FRANCISCO; CENTER FOR
ENVIRONMENTAL HEALTH;
25 CALIFORNIANS FOR PESTICIDE REFORM;
PESTICIDE WATCH EDUCATION FUND;
26 PESTICIDE ACTION NETWORK NORTH
AMERICA; CITIZENS FOR EAST SHORE
27 PARKS; STOP THE SPRAY SAN FRANCISCO,

28 Petitioners and Plaintiffs,

No.
**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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v.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE; A.G. KAWAMURA, in his official capacity as Secretary of the California Department of Food and Agriculture; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Petitioners and Plaintiffs OUR CHILDREN’S EARTH FOUNDATION; MOTHERS OF MARIN AGAINST THE SPRAY; STOP THE SPRAY EAST BAY; CITY OF ALBANY; CITY OF BERKELEY; CITY OF RICHMOND; CITY AND COUNTY OF SAN FRANCISCO; CENTER FOR ENVIRONMENTAL HEALTH; CALIFORNIANS FOR PESTICIDE REFORM; PESTICIDE WATCH EDUCATION FUND; PESTICIDE ACTION NETWORK NORTH AMERICA; CITIZENS FOR EAST SHORE PARKS; and STOP THE SPRAY SAN FRANCISCO (collectively, “Petitioners”) bring this action for writ of mandate under the California Environmental Quality Act (“CEQA”) and complaint for declaratory and injunctive relief (“Petition”) on behalf of Petitioners’ interested members and residents, and in the public interest. By this action against the CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (“CDFA”) and A.G. KAWAMURA, in his official capacity as Secretary of CDFA (“Secretary”) (collectively, “Respondents”), the Petition challenges Respondents’ actions and decisions in certifying and approving the Final Programmatic Environmental Impact Report concerning CDFA’s Light Brown Apple Moth Eradication Program (the “Apple Moth Eradication Program” or “Program”).

INTRODUCTION

1. On March 22, 2010, CDFA’s Secretary certified that the Final Programmatic Environmental Impact Report for the Apple Moth Eradication Program (“Eradication EIR”) in the State of California is in compliance with the California Environmental Quality Act (“CEQA”).¹ Contrary to that certification, the Eradication EIR is critically flawed and clearly violates the requirements of CEQA.

¹ All references and citations to “CEQA” refer to California Public Resources Code section 21000, *et seq.*

1 2. In the Final Eradication EIR, CDFA fails to inform the public what “treatments” it
2 may employ in the future to eradicate the Apple Moth. The public is left wondering, after reading
3 what CDFA has certified as an “informative” document, whether CDFA will in the future ground
4 spray or possibly even aerially spray pheromone pesticides. Indeed, one has no way of guessing
5 *what* spraying or any of the other many approved treatments CDFA will use (or *what* the risks
6 and synergistic effects these treatments or any combination of treatments may have), *where*
7 CDFA will use the various treatments (e.g., in rural versus urban communities), *when* CDFA will
8 use what treatments, or even *why* CDFA will use whatever combination of treatments it may
9 decide to use for any specific place in the Program “area” (which is, effectively, the entire State).
10 CDFA has not even disclosed whether what it has described as a “programmatic” EIR is the end
11 of its public disclosures and analysis pertaining to its Apple Moth Eradication Program, or
12 whether CDFA will in the future conform with CEQA’s requirement to “tier” subsequent, site-
13 specific environmental analyses so that the public will in fact have the information to which it is
14 entitled regarding the “treatments” that CDFA will employ.

15 3. The Final Eradication EIR issued by CDFA proposes a program to *eradicate* the
16 Apple Moth from California. Many of the comments during the public comment period
17 following CDFA’s issuance of the Draft Eradication EIR objected to CDFA’s insistence that
18 eradication was both necessary and feasible. CDFA refused to legitimately consider numerous
19 Apple Moth “*control*” treatments urged by the public, local governments, and independent
20 experts solely because the objective of its program, as defined by CDFA in its Draft and Final
21 Eradication EIR, was to *eradicate* the Apple Moth from the State, not merely to *control* or
22 *minimize* its populations. After the public comment period closed, however, and after the Final
23 Eradication EIR had been circulated, CDFA remarkably abandoned the project objective it told
24 the public it was pursuing – i.e., *eradication* of the Apple Moth. In certifying the Final
25 Eradication EIR and approving what it still calls the “Eradication” Program, CDFA now finds the
26 *eradication* objective to be infeasible “at this time,” and instead states that the objectives of the
27 Program are to “*control, contain and suppress*” the Apple Moth, with eradication efforts confined
28 only to small, discrete Apple Moth populations.

1 4. This about-face on the most basic objectives of the Program renders the Final
2 Eradication EIR deficient both as to the project description and as to the necessary consideration
3 of alternatives. CDFA may not change the stated objective of the Program *after* the Final EIR
4 issues, or after all public and other agency comment opportunities (and its legal responsibility to
5 fully respond to such comments) have ceased. CDFA must now prepare and circulate for
6 comment an EIR with an accurate (and its current) project objective of “minimizing the impact of
7 [the Apple Moth] in California,” that adequately considers all feasible alternatives to that project.

8 5. CDFA’s cavalier approach to its CEQA compliance obligations is particularly
9 troubling in light of its outrageous actions over the last three years pertaining to the Apple Moth.

10 6. The Apple Moth exists in established populations in many areas, including its
11 native Australia, and New Zealand, the United Kingdom, New Caledonia, Hawaii, and California.
12 Some scientists specializing in the study of such “leaf roller” moths report that the Apple Moth
13 has existed in California for thirty years or more, and there is no disagreement among the experts,
14 even those on which CDFA relies, that the Apple Moth has existed as an introduced species in
15 other countries for over one hundred years. According to scientists and agriculturalists who have
16 studied the Apple Moth in these other countries, the Apple Moth poses no significant threat to
17 agriculture and is managed almost exclusively by its natural predators (notably, those natural
18 predators have become increasingly effective in control of the Apple Moth since these countries
19 stopped using nerve agent insecticides that tended to kill those natural predators).

20 7. CDFA nonetheless has a different view of the *potentially* harmful effects of the
21 Apple Moth. In early 2007, after a retired Bay Area entomologist discovered an Apple Moth in
22 traps he had set in his backyard in Berkeley, CDFA panicked. CDFA declared that the Apple
23 Moth, if it spread, could devastate California agriculture, despite the absence of any evidence of
24 actual damage caused by the moth. Accordingly, CDFA claimed an “emergency” exemption
25 from CEQA and began an aggressive eradication campaign through various means, including the
26 spraying of untested, synthetic pheromone-based chemicals from the air over heavily populated
27 areas in Monterey and Santa Cruz counties, with no knowledge or analyses concerning the
28 potential adverse health or environmental impacts associated with its aerial spray campaign.

1 for its reduction. OCE, on behalf of its members, works to enforce environmental laws at both
2 federal and state levels, to reduce pollution, and to educate the public concerning those laws and
3 their enforcement. * OCE members are concerned about the potential adverse health and
4 environmental effects of the Apple Moth Eradication Program, they have actively opposed and
5 objected to the Program, and they have submitted comments during the public comment period
6 for the Eradication Program EIR.

7 **12.** Petitioner and Plaintiff MOTHERS OF MARIN AGAINST THE SPRAY
8 (“MOMAS”) is a nonprofit group of Marin County mothers and families committed to creating
9 healthy communities for children by reducing the use of household and environmental toxins.
10 MOMAS believes that every child deserves a healthy future, and the chance to reach his or her
11 full potential, without unnecessary exposure to pesticides in our communities. MOMAS formed
12 in April 2008 as an effort by four Marin County mothers to organize and prevent CDFAs’ plans
13 for aerial pesticide spraying to eradicate the Apple Moth. MOMAS believes that the Program is
14 not necessary, not safe, and will not work, and that it is a waste of taxpayer dollars. MOMAS has
15 educated the community and the press about this Program, has written comment letters and held
16 meetings with elected officials, and has objected to the Program at public hearings. MOMAS is
17 comprised of over 500 mothers and families in Marin County.

18 **13.** Petitioner and Plaintiff STOP THE SPRAY EAST BAY is a non-profit, grassroots
19 organization formed in 2007 in response to the threat of aerial pesticide spraying of the Bay Area
20 as part of CDFAs’ plan to eradicate the Apple Moth. STOP THE SPRAY EAST BAY strongly
21 opposes the Apple Moth Eradication Program as unnecessary, unsafe, and ineffective. STOP
22 THE SPRAY EAST BAY also aims to address other pesticide-related issues with a focus on
23 bringing together producers and consumers to support safe food and safe farms. STOP THE
24 SPRAY EAST BAY members are concerned about the potential adverse health and
25 environmental effects of the Apple Moth Eradication Program, they have actively opposed and
26 objected to the Program, and they have submitted comments during the public comment period
27 for the Eradication EIR. STOP THE SPRAY EAST BAY members include about 500 Bay Area
28 residents.

1 **14.** Petitioner and Plaintiff CITY OF ALBANY (“Albany”) is a city of approximately
2 17,000 residents in the metropolitan Bay Area. Albany has an interest in challenging the
3 Eradication EIR for several reasons. Apple Moths have been trapped in Albany. In 2008, Albany
4 was within the aerial pesticide spray zone for the Apple Moth. The city remains within an Apple
5 Moth quarantine area and thus it would be potentially subject to any of the treatments proposed in
6 the Eradication EIR. Such treatments include ground spraying of public and private property with
7 pesticides whose formulas have not been disclosed, and, in the case of pheromone pesticides, are
8 virtually untested for human exposure risks. Several of the proposed treatments involve attaching
9 pesticide emitters (twist ties) or pesticide products to bushes and other landscaping using sticky
10 adhesive. These treatments would expose child and adult residents, as well as domestic animals,
11 to these pesticides with unknown health consequences. Albany is well known in the Bay Area for
12 its exceptional schools; families seek to live in Albany so their children can attend Albany
13 schools, and homes in Albany command higher prices than in other local cities and hold market
14 value because of the desirability of the city’s schools. Albany could, therefore, suffer direct
15 economic harm as a result of pesticide applications to schools, as provided for in the Apple Moth
16 Eradication Program. The Program also threatens violations of Albany residents’ civil and
17 property rights with the provision for forced spraying of private property if owners refuse.
18 Albany has a strict pest management ordinance, developed through a long process of community
19 consensus-building, that allows almost no pesticide use on public property; the treatments
20 proposed in CDFA’s Program violate the community values codified in that ordinance. Further,
21 thanks to the alertness and quick action of the Albany resident who chaired the city’s Integrated
22 Pest Management Task Force at the time aerial spraying was first proposed for the Apple Moth in
23 the Bay Area, Albany was the first Bay Area city to take action opposing the Apple Moth
24 Eradication Program in 2008, and led other cities and the Bay Area Mayors’ conference to take a
25 unified stand against the Program.

26 **15.** Petitioner and Plaintiff CITY OF BERKELEY (“Berkeley”) is a charter city
27 formed under and in accordance with the constitution and laws of the State of California.
28 Berkeley and its approximately 110,000 residents have a strong interest in the preservation,

