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6 NORTH COAST RIVERS ALLIANCE, *et. al*

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 NORTH COAST RIVERS ALLIANCE, STOP THE
SPRAY MARIN, CALIFORNIA ALLIANCE TO STOP
11 THE SPRAY, FRANK EGGER, WHITNEY
MERCHANT, LORALIE CIOFFI, HELEN KOZORIZ,
12 GAYLE MCLAUGHLIN, ROBERT LIEBER, TONY
MADRIGAL, LARRY BRAGMAN, PAULINA
13 BORSOOK, SHARON LUEHS, MIKE DE LAY and
JANICE DE LAY,

14 Petitioners and Plaintiffs,

15 v.

16 A.G. KAWAMURA, Secretary of the California
17 Department of Food and Agriculture, the CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE, and
18 DOES I -X,

19 Respondents and Defendants,

20 ABERDEEN ROAD COMPANY, PACIFIC
BIOCONTROL CORPORATION, ISCA TECHNOLOGY
21 INCORPORATED, and DOES XI-XX,

22 Real Parties in Interest

Civ. No.

VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ATTORNEY'S FEES FOR
VIOLATION OF CEQA

23
24 Petitioners/ plaintiffs NORTH COAST RIVERS ALLIANCE, STOP THE SPRAY MARIN,
25 CALIFORNIA ALLIANCE TO STOP THE SPRAY, FRANK EGGER, WHITNEY MERCHANT,
26 HELEN KOZORIZ, GAYLE McLAUGHLIN, ROBERT LIEBER, TONY MADRIGAL, PAULINA
27 BORSOOK, SHARON LUEHS, MIKE DE LAY and JANICE DE LAY (hereinafter "petitioners")
28 hereby petition the Court for a writ of mandate and for preliminary and permanent injunctions and

1 declaratory relief against respondents A.G. KAWAMURA, Secretary of the California Department of
2 Food and Agriculture, and CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, and
3 DOES I through XX, and by this verified petition allege as follows:

4 **INTRODUCTION**

5 1. Petitioners bring this action to challenge the legality of the actions of respondents
6 Secretary of the California Department of Food and Agriculture (“CDFA”) A.G. KAWAMURA, and the
7 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (collectively, “CDFA” or
8 “respondents”) in certifying the Final Programmatic Environmental Impact Report (“Final EIR” or
9 “FEIR”) for the Light Brown Apple Moth (“LBAM”) Eradication Program (“Project” or “LBAM
10 Program”), approving the Project and making all related findings.

11 **VENUE AND JURISDICTION**

12 2. This Verified Petition for Writ of Mandate is authorized by Code of Civil
13 Procedure sections 526 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), 1094.5
14 (administrative mandate) and Public Resources Code sections 21168 (administrative mandate) and
15 21168.5 (traditional mandate).

16 3. Pursuant to Code of Civil Procedure section 395(a) this Court has venue over this action
17 because respondents reside in Sacramento County.

18 4. Pursuant to Code of Civil Procedure section 388, and Public Resources Code section
19 21167.7, petitioners are serving the California Attorney General with a copy of this Verified Petition and
20 Complaint, and consistent with Public Resources Code section 21167.5, petitioners have served CDFA.
21 with notice of this suit.

22 **PARTIES**

23 5. Petitioner NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit
24 unincorporated association whose members reside, work, or recreate in the coastal watersheds of
25 Northern California from Monterey County to Del Norte County. NCRA was formed for the purpose of
26 protecting the rivers of California’s Northern and Central Coast and their watersheds from the adverse
27 effects of excessive water diversions, ill-planned urban development, harmful resource extraction,
28 pollution including the application of pesticides, and other forms of environmental degradation. Its

1 members reside within the LBAM Program area, and use and enjoy the rivers and watersheds of
2 California's Northern and Central Coast for recreational, aesthetic, scientific study, and spiritual
3 purposes. They are concerned about and would be harmed by the impacts of the Project on these
4 watersheds. NCRA has submitted oral and written comments objecting to CDFA's LBAM Program
5 throughout its public review process, and in 2008 successfully sued to overturn the U.S. Environmental
6 Protection Agency's purported exemption of Checkmate OLR-F and LBAM-F from registration under the
7 Federal Insecticide, Fungicide, and Rodenticide Act, preventing CDFA from continuing its campaign to
8 aerially spray those dangerous LBAM pesticides in urban areas.

9 6. Petitioner STOP THE SPRAY MARIN ("STSM"), was founded in February 2008 as an
10 unincorporated association originally sponsored by Search For the Cause, a Marin County non-profit
11 charitable organization. STSM represents more than 4,000 Marin County residents opposed to the
12 LBAM Program, including its ground and aerial spray proposals and the proposed release of millions of
13 irradiated moths from aircraft over cities in the Monterey Bay and San Francisco Bay Areas. STSM has
14 submitted oral and written objections in all phases of the LBAM EIR comment process, organized
15 educational forums with expert witnesses regarding CDFA's LBAM Eradication Program, and
16 participated in the state legislative process to assist Bay Area legislators in drafting and passing bills to
17 address LBAM. Its members reside, work and recreate within the LBAM Program area, and are
18 concerned about and would be harmed by the environmental impacts of the Project.

19 7. Petitioner CALIFORNIA ALLIANCE TO STOP THE SPRAY ("CASS") is a public
20 benefit corporation organized under the laws of the State of California comprising organizations, elected
21 officials, health professionals, and individuals who live, work and recreate within the LBAM Program
22 area and share the goal of protecting their inalienable rights to environmental safety and privacy, and to
23 not have their persons or property sprayed with chemicals, pesticides, insects, or any other substance.
24 CASS was formed in 2007 in response to its members' collective concern about the adverse effects of
25 CDFA's LBAM Program. CASS' members would be harmed by, and through CASS have objected to,
26 the LBAM Programs' adverse impacts on the environment.

27 8. Petitioner and former Fairfax Mayor FRANK EGGER is a founder and board-member of
28 STSM and a founding board member of NCRA. Mr. EGGER and his family live, work and recreate

1 within the LBAM Program area. Mr. EGGER is concerned about, would be harmed by and has objected
2 to the impacts of the Project on the environment.

3 9. Petitioner WHITNEY MERCHANT is the Coordinator for STSM. Ms. MERCHANT
4 lives, works and recreates within the LBAM Program area in Marin County and is concerned about,
5 would be harmed by and has objected to the Project's impacts on the environment.

6 10. Petitioner LORALIE CIOFFI is the spokesperson for CASS and resides, works and
7 recreates within the LBAM Program area. As spokesperson for CASS, she has presented oral and written
8 comments against the Project's proposed unwarranted spraying of pesticides upon non-consenting
9 residents. She is concerned about and would be harmed by the Project's environmental impacts.

10 11. Petitioner HELEN KOZORIZ is a leader and representative of Stop the Spray Alameda
11 County who resides, works and recreates within the LBAM Program area. Ms. KOZORIZ is concerned
12 about, would be harmed by and has objected to the Project's impacts on her environment.

13 12. Petitioner GAYLE McLAUGHLIN is the Mayor of Richmond, in Contra Costa County,
14 California, and sues in her individual capacity. MS. McLAUGHLIN lives, works, and recreates within
15 the LBAM Program area, and is concerned about, would be harmed by and has objected to the Project's
16 impact on the environment.

17 13. Petitioner ROBERT LIEBER is a registered nurse and City Councilmember from the City
18 of Albany, in Alameda County, California, and sues in his individual capacity. Mr. LIEBER and his
19 family reside live, work and recreate within the LBAM Program area. He is concerned about, would be
20 harmed by and has objected to the impacts of the Project on the environment.

21 14. Petitioner TONY MADRIGAL, is a City Councilmember from the City of Santa Cruz, in
22 Santa Cruz County, California, and sues in his individual capacity. Mr. MADRIGAL resides, works,
23 governs and recreates within the LBAM Program area. He is concerned about, would be harmed by and
24 has objected to the impacts of the Project on the environment.

25 15. Petitioner PAULINA BORSOOK is a leader and representative of Stop the Spray Santa
26 Cruz, and resides, works and recreates within the LBAM Program area. Ms. BORSOOK is concerned
27 about, would be harmed by and has objected to the Project's impacts on the environment.

28 16. Petitioner LARRY BRAGMAN, is the Vice-Mayor of the Town of Fairfax, in Marin

1 County, California, and sues in his individual capacity. Mr. BRAGMAN resides, works, governs and
2 recreates within the LBAM Program area. He is concerned about, would be harmed by and has objected
3 to the impacts of the Project on the environment.

4 17. Petitioner SHARON LUEHS is the Coordinator for Stop the Spray San Mateo County and
5 is a cancer survivor. Ms. LUEHS resides, works and recreates within the LBAM Program area. She is
6 concerned about, would be harmed by and has objected to the Project's impacts on the environment.

7 18. Petitioner MIKE DE LAY is a Coordinator for the Coalition of California Cities to Stop
8 the Spray. Mr. DE LAY is a resident of Monterey County and was a victim of CDFG's 2007 aerial
9 spraying in that county. Mr. DE LAY resides, works and recreates within the LBAM Program area. Mr.
10 DE LAY is concerned about, would be harmed by and has objected to the Project's impacts on the
11 environment.

12 19. Petitioner JANICE DE LAY is a Coordinator for the Coalition of California Cities to Stop
13 the Spray. Mrs. DE LAY is a resident of Monterey County and was a victim of CDFG's 2007 aerial
14 spraying in that county. Mrs. DE LAY resides, works and recreates within the LBAM Program area.
15 Mrs. DE LAY is concerned about, would be harmed by and has objected to the Project's impacts on the
16 environment.

17 20. Petitioners have authorized their attorneys to file this lawsuit on their behalf to vindicate
18 their substantial beneficial interest in securing respondents' compliance with CEQA in connection with
19 their review and approval of the LBAM Program.

20 21. Petitioners have performed any and all conditions precedent to the filing of this Verified
21 Petition, have objected to the LBAM Program, and have exhausted any and all available administrative
22 remedies.

23 22. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law,
24 within the meaning of Code of Civil Procedure section 1086. Unless this Court issues a writ of mandate
25 setting aside respondents' approval of the Project and ordering them to comply with CEQA, the
26 environmental interests of petitioners and the public will be substantially and irreparably harmed. No
27 monetary damages or other legal remedy could adequately compensate for the harms to petitioners and
28 the environment that would arise if respondents' unlawful conduct is allowed to stand.

1 23. Petitioners are entitled to injunctive relief under Code of Civil Procedure section 526
2 because the Project threatens irreparable environmental harm. Unless enjoined, CDFA will implement
3 the LBAM Program despite its lack of compliance with CEQA and other applicable laws. Petitioners
4 will thereby suffer irreparable harm due to respondents' failure to take the steps required under CEQA to
5 adequately protect the environment. Injunctive relief is therefore warranted under Code of Civil
6 Procedure section 525 *et seq.* and Public Resources Code section 21168.9 to prevent irreparable harm to
7 the environment.

8 24. Respondent CDFA is an agency of the State of California directed by the Secretary of
9 Food and Agriculture and organized pursuant to Food and Agricultural Code ("F.A.C.") section 101 *et*
10 *seq.* CDFA oversees, promotes and regulates the State's agricultural and food industries, and spearheads
11 California's response to species found to be agricultural pests. CDFA is the Project's Lead Agency under
12 CEQA and its proponent. CDFA prepared and approved the Project and its Final Programmatic
13 Environmental Impact Report, and is charged with the Project's implementation.

14 25. Respondent A. G. KAWAMURA is the Secretary of the CDFA. The Secretary of the
15 CDFA is the civil executive who directs and manages the CDFA pursuant to F.A.C. section 102. As
16 Secretary, he approved the LBAM Eradication Program and CDFA's accompanying findings and
17 mitigation measures, and certified its Final Programmatic EIR on or about March 22, 2010.

18 26. Real Party in Interest ABERDEEN ROAD COMPANY is a corporation organized under
19 the laws of the State of Pennsylvania that manufactures EPA-registered biological pesticides used to
20 control LBAM including Hercon Disrupt Bio-Flake LBAM and Hercon Disrupt Bio-Tie LBAM. Hercon
21 Disrupt Bio-Flake LBAM is registered with the California Department of Pesticide Regulation ("DPR"),
22 and is identified as a component of the pesticides to be utilized in CDFA's LBAM Eradication Program.
23 As such, ABERDEEN ROAD COMPANY is a recipient of CDFA's approval of the LBAM Program,
24 and is therefore sued as a real party in interest under Public Resources Code section 21167.6.5.

25 27. Real Party in Interest PACIFIC BIOCONTROL CORPORATION is a corporation
26 organized under the laws of the State of Washington that manufactures Isomate LBAM Plus ("Isomate"),
27 a biological pesticide registered with the EPA and DPR for the control of LBAM. Isomate is identified as
28 a component of the pesticides to be utilized in CDFA's LBAM Program. As such, PACIFIC

1 BIOCONTROL CORPORATION is a recipient of CDFA's approval of the LBAM Program, and is
2 therefore sued as a real party in interest under Public Resources Code section 21167.6.5.

3 28. Real Party in Interest ISCA TECHNOLOGIES INCORPORATED is a corporation
4 organized under the laws of the State of California that manufactures EPA-registered biological pesticides
5 used to control LBAM, including SPLAT LBAM HD and SPLAT LBAM
6 LD. SPLAT LBAM HD ("SPLAT") is registered with DPR and is identified as a component of the
7 pesticides to be utilized in CDFA's LBAM Eradication Program. As such, ISCA TECHNOLOGIES
8 INCORPORATED is a recipient of CDFA's approval of the LBAM Program, and is therefore sued as a
9 real party in interest under Public Resources Code section 21167.6.5.

10 29. Petitioners are unaware of the true names and capacities of respondents DOES I-X, and
11 sue such respondents herein by fictitious names. Petitioners are informed and believe, and based on such
12 information and belief allege, that the fictitiously named respondents are public officials or agencies and
13 are also responsible, in whole or in part, for the approval and implementation of the Project. When the
14 true identities and capacities of these respondents have been determined, petitioners will, with leave of
15 the Court if necessary, amend this Petition to insert such identities and capacities.

16 30. Petitioners are unaware of the true names and capacities of real parties in interest DOES
17 XI-XX, and sue such real parties herein by fictitious names. Petitioners are informed and believe, and
18 based on such information and belief allege, that the fictitiously named real parties are entities or
19 individuals who have a direct and substantial economic interest in and are the recipients of CDFA's
20 approval and implementation of the Project within the meaning of Public Resources Code section
21 21167.6.5. When the true identities and capacities of these real parties have been determined, petitioners
22 will, with leave of the Court if necessary, amend this Petition to insert such identities and capacities.

23 **FACTUAL BACKGROUND**

24 **The Light Brown Apple Moth**

25 31. In 2006, a retired entomologist trapped two moths that he believed to be LBAM (*Epiphyas*
26 *postvittana*) in his yard in Berkeley, California. Unsure of his identification, he sent the moth samples to
27 experts overseas for confirmation. Upon their verification, he reported his observations to agricultural
28 authorities.

1 32. In February 2007 the United States Department of Agriculture's ("USDA") Animal and
2 Plant Health Inspection Service ("APHIS") commenced a survey to confirm the presence of LBAM. On
3 March 1, 2007 they placed an undisclosed number of pheromone-baited traps in locations in Alameda and
4 Contra Costa County. After approximately one week of trap inspections, the APHIS laboratory
5 confirmed that the specimens in the traps were LBAM.

6 33. The LBAM is an Australian native that is also established in New Zealand, New
7 Caledonia, Hawaii, Britain, and Ireland. It is a member of the *Tortricidae* or leaf-roller moth family,
8 found in the order *Lepidoptera*. LBAM's feeding behavior can result in minor aesthetic damage to the
9 surfaces of affected leaves and fruit, but LBAM rarely penetrate the host fruit. LBAM larvae roll leaves
10 around themselves for protection and to create hospitable, cocoon-like conditions for growth. LBAM are
11 not defoliators; as leaf rollers they rely on the leaves' structural integrity. LBAM lay eggs and their
12 larvae feed lightly on a wide range of host plants, such that any damaging effects resulting from the
13 feeding are dispersed across a wide spectrum of plants, which minimizes the risk of damage to any
14 specific plant species. Like other adult moths, adult LBAM do not feed.

15 34. LBAM will mate up to three times during their 1-2 week adult phase, producing 20 to 50
16 eggs per mating. Due to natural predators such as parasites, birds, spiders, wasps, and other insects, the
17 majority of eggs laid do not reach maturity. LBAM that do reach maturity are also subject to general
18 predation. LBAM provide food for birds, bats and other wild insectivores.

19 35. During their lifespan, most LBAM do not travel more than approximately 100 meters from
20 their hatching sites. LBAM prefer to feed and reproduce in cool, shaded conditions, such as riparian
21 areas, and do not thrive at temperatures below 45 degrees Fahrenheit or above 87 degrees Fahrenheit.
22 Temperature, mobility and predation all limit LBAM's range.

23 36. After confirming the existence of LBAM within the San Francisco Bay Area, CDFA and
24 APHIS began a coordinated trapping program to determine the scope of LBAM's presence in California.
25 This trapping program indicated the presence of LBAM concentrations in the counties of Santa Cruz and
26 Monterey. CDFA approved the aerial application of pesticides to these counties in fall of 2007 without
27 performing environmental reviews under CEQA.

28 ///

1 Scoping and the Draft Programmatic EIR

2 37. After two successful lawsuits mandated that CDFA prepare an EIR prior to performing
3 other eradication measures within Santa Cruz County and Monterey County, CDFA issued its first Notice
4 of Preparation of an EIR on February 22, 2008. Until March 20, 2008, CDFA accepted comments on the
5 scope of its planned EIR. CDFA issued its second Notice of Preparation on July 22, 2008, and accepted
6 additional scoping comments until September 20, 2008. Petitioners contributed scoping comments to
7 CDFA during these scoping periods.

8 38. On July 31, 2009, CDFA released the Draft Programmatic EIR (“DEIR”) for the LBAM
9 Program for public review and comment and published downloadable copies of the DEIR on its website.
10 CDFA accepted public comments on the DEIR until September 28, 2009. In the cities of Long Beach,
11 Carpinteria, Fresno, Sacramento, Sonoma, Watsonville and Oakland, CDFA also held meetings where
12 concerned residents could submit oral comments to the agency about the DEIR. Petitioners submitted
13 comments during this time, both in person and in writing.

14 39. The DEIR includes a No Program Alternative that predicts widespread devastation and
15 economic and environmental disaster as the outcome of CDFA inaction. The DEIR forecasts that LBAM
16 will cause widespread and expensive damage to both crops and open spaces, will cause residents to
17 increase pesticide uses, will increase the risk of wildfires and will expand its presence through most of
18 California.

19 40. The DEIR states that the Project’s objective is “to eradicate LBAM from the state of
20 California by 2015.” DEIR p. S-3. CDFA used the goal of eradication to determine the scope of
21 acceptable program alternatives; program alternatives that fell short of total eradication were not
22 considered as part of the LBAM Program. DEIR p. S-5.

23 41. CDFA “eliminated from further consideration” multiple alternative LBAM control tools
24 prior to its publication of the DEIR. DEIR p. S-5. CDFA specifically declined to consider integrated pest
25 management (“IPM”), egg-laying repellents, classic biological controls, mass trapping of female LBAM,
26 quarantines, and cultural control through removal of over-wintering sites because these alternatives would
27 not eradicate LBAM from the state. DEIR pp. S-5 to S-6.

28 42. The DEIR includes eight alternatives, used in concert to eradicate the moth. The DEIR

1 proposes three pheromone application techniques for mating disruption: Alternative MD-1 consists of
2 the application of pheromone laced Isomate twist-ties within isolated areas at least five miles from a
3 larger infestation area; Alternative MD-2 consists of ground applications of pheromone products to
4 “trees, shrubs and backyards” within larger infested areas; and Alternative MD-3 consists of the aerial
5 spraying of Hercon Bio-Flake and SPLAT LBAM within a 1.5 mile radius of any LBAM detection within
6 undeveloped regions. DEIR pp. 2-9 to 2-11. The DEIR identifies Alternative MD-1 as the
7 environmentally superior alternative. DEIR p. S-6. CDFA plans on implementing Alternatives MD-1
8 and MD-2 on private property, with or without the consent of owners and residents.

9 43. Alternative MMA consists of the ground treatment of street trees and utility poles in a 1.5
10 mile radius of any detection site with pheromones mixed with pesticide to create a male-moth attractant.
11 DEIR p. 2-11. Alternative MMA was also proposed to “enhance the efficacy” of other alternatives by
12 reducing LBAM populations. DEIR p. 2-11.

13 44. Alternative SIT depends on the use of sterile insects to reduce moth populations.
14 Although Alternative SIT was not fully developed when CDFA published the DEIR in July 2009, CDFA
15 determined in the DEIR that Alternative SIT would “be the primary tool for LBAM eradication in
16 California.” DEIR p. 2-14. For Alternative SIT to be effective, the USDA must expose captive-bred
17 LBAM to enough radiation to render them unable to produce viable offspring, but not so much radiation
18 as to substantially decrease their ability to competitively mate with wild moths. The DEIR assumes that
19 these sterile moths will be released via airplane, at a minimum height of 300 feet. However, at the time
20 the DEIR was published, the USDA had not finalized the protocols for effective sterilized LBAM
21 releases. The DEIR states that releases of sterile LBAM under Alternative SIT would occur over large
22 regions every 7 to 14 days for the duration of at least two LBAM life cycles past the last detection of wild
23 moths in an area. DEIR p. 2-14.

24 45. Alternative Bio-P consists of the release of *Trichogramma* wasps in areas of “moderate to
25 heavy LBAM detections.” DEIR p. 2-14. CDFA proposed to use Alternative Bio-P “in conjunction with
26 other tools especially the male moth attractant treatments and the release of sterile moths.” DEIR p. 2-14.
27 Alternative Bio-P would release a density of 1,000,000 wasps per square mile, via wasp egg-laden index
28 cards attached to foliage. DEIR p. 2-14.

1 46. CDFA proposed the foliar ground treatments of traditional pesticides Spinosad
2 (“Alternative S”) and *Bacillus thuringiensis kurstaki* (“Alternative Btk”) for use in areas “where heavier
3 larval populations are detected.” DEIR p. 2-13. This includes applications upon private land, with or
4 without homeowner consent.

5 47. The DEIR purported to address the potential impacts of the eight LBAM Program
6 alternatives on agricultural resources, land uses, noise, air quality, public services and hazard response,
7 human health, aquatic resources, terrestrial resources, water resources, ecological health and greenhouse
8 gases. The DEIR also purported to address the potential cumulative impacts of the LBAM Program
9 alternatives.

10 48. Petitioners, and others, submitted comments about the DEIR’s deficiencies. Among other
11 things, these comments challenged CDFA’s unsupported conclusion that eradicating LBAM by 2015
12 would be feasible, examined the DEIR’s incorrect characterization of the No Program Alternative’s
13 impacts, and noted the DEIR’s failure to fully examine the LBAM Program alternatives’ environmental
14 impacts, individually and cumulatively.

15 49. When CDFA published the DEIR online, it did not provide the whole document for public
16 download and review. Missing were four attachments to Appendix C2, addressing criteria pollutant
17 emission calculations for off-road equipment, on-road vehicles, and airplanes, as well as the droplet
18 evaporation analysis for hydraulic spraying. Petitioners notified CDFA of this omission during the
19 comment period.

20 The Final Programmatic EIR

21 50. CDFA released the Final EIR for the LBAM Program on February 26, 2010. The Final
22 EIR consists of two volumes of CDFA’s revisions and responses to public comments and the DEIR.

23 51. The Final EIR maintains the program objective of LBAM eradication by 2015. This
24 program objective shaped CDFA’s determination that it need not study new or different program
25 alternatives. For example, in one comment response, CDFA states “[c]ontrol is not a Program objective,
26 and Integrated Pest Management (IPM) is a control measure.” FEIR p. 3-31. Elsewhere, CDFA states
27 that “[i]t was appropriate for CDFA to eliminate from further consideration proposed alternatives that fail
28 to meet the Program objective of eradicating the pest. Eradication was defined as the Program’s objective

1 based on substantial evidence, and CEQA does not require that the [Programmatic] EIR analyze
2 outcomes or Program components that are not capable of meeting that objective.” FEIR p. 4-344.

3 52. The FEIR’s cumulative impacts analysis assumes that the LBAM Program will end by
4 2015. Although petitioners had raised the concern that the LBAM Program would extend past 2015,
5 therefore creating unexamined impacts, CDFA dismissed this concern in the Final EIR. CDFA stated
6 that “[b]ased on the substantial evidence before it, CDFA has concluded that it is feasible for the Program
7 to eradicate LBAM in California by 2015. CDFA disagrees with the commenter’s unsupported
8 speculation that LBAM will not be eradicated by 2015 and the Program will continue ‘long past the
9 projected eradication date.’” FEIR p. 4-328.

10 53. Despite the public’s comments questioning the validity of its unsubstantiated conclusions,
11 CDFA’s Final EIR maintains the position that the No Program Alternative is properly described and
12 constructed.

13 54. To support one such conclusion—that the No Program Alternative will increase residential
14 pesticide use—CDFA’s Final EIR cites to studies of residential use of pesticides against household and
15 garden pests such as *ants, rodents and weeds*. Yet the studies do not indicate whether such households
16 would increase or alter pesticide uses with the introduction of *LBAM*.

17 55. The Final EIR continues to assert that the No Program Alternative increases the risk of
18 forest fires, despite a complete lack of evidence that such a risk exists or is likely to exist.

19 56. Although the Final EIR purports to include evidence of damage to native plants caused by
20 LBAM, it acknowledges that the damage was caused by a *mix* of native leaf-roller and LBAM larvae.
21 FEIR pp. 2-5, 2-34. The Final EIR does not contain or cite any substantial evidence that LBAM *alone*, or
22 even to any significant extent as a *contributor*, causes the significant damage predicted by CDFA’s No
23 Program Alternative.

24 57. CDFA’s February 26, 2010 Final EIR states that “at the time of this writing” LBAM is not
25 widely established in California. FEIR p. 4-328. For that reason, it declined to alter its eradication
26 timeline, or perform any analysis of environmental impacts that would occur past the program’s projected
27 end-point.

28 58. The Final EIR determines that Alternative MMA poses an unacceptable risk of cancer due

1 to its permethrin content. FEIR p. 2-1. For that reason CDFA “has withdrawn the Male Moth Attractant
2 Alternative from the list of potential tools to be used in the LBAM Eradication Program.” FEIR p. 2-1.

3 59. Petitioners, and others, submitted additional comment letters in response to the Final EIR,
4 objecting to significant omissions in the final document. Petitioners also noted that the EIR, as available
5 for download, still did not include the missing attachments to Appendix C2.

6 60. On or about March 10, 2010, CDFA uploaded additional files to its LBAM program
7 website. Although the Draft EIR (as made publicly available on the website) had not previously included
8 these files, CDFA claimed that no further action was needed on its part as it had included the information
9 in the “Draft [Programmatic] EIR that was submitted to the State Clearinghouse, libraries and circulated
10 to the public.”

11 61. On or about March 22, 2010, CDFA released a Supplement to the FEIR (“supplement”)
12 that contains two additional comment letters, and CDFA’s responses, which were not included in the
13 FEIR. The supplement reiterates that “substantial evidence supports CDFA’s conclusion” that
14 eradicating LBAM is feasible. Supplement p. 2.

15 **CDFA’s Findings and Mitigations and Notice of**
16 **Determination Certifying the EIR**

17 62. Respondent Secretary Kawamura certified the FEIR on March 22, 2010. At the same
18 time, he approved findings and mitigation measures (“Findings”) prepared by CDFA staff that
19 dramatically alter the scope and purpose of the LBAM Program. On March 22, 2010, CDFA delivered its
20 Notice of Determination (“NOD”) to the Office of Planning and Research pursuant to Public Resources
21 Code section 21108.

22 63. Despite the DEIR’s clear objective “to eradicate LBAM from the state of California by
23 2015,” and CDFA’s response to petitioners’ comments within the Final EIR reiterating this objective,
24 CDFA’s Findings accompanying the NOD determined that the LBAM Program will continue beyond
25 2015. Neither the DEIR nor the FEIR addressed the direct, indirect and cumulative impacts of the LBAM
26 Program should it continue beyond 2015.

27 64. CDFA’s Findings, as approved by A.G. Kawamura on March 22, 2010, state that the
28 EIR’s references to 2015 arose under the assumption that the LBAM Program would commence in 2008,

1 a year *before* the Draft EIR was published.

2 65. The Findings accompanying CDFA's NOD and EIR certification substantially revise the
3 LBAM Program's objectives and duration. Findings pp. 8, 10. One new objective is to "protect the
4 nation's food supply, and protect and promote California's agricultural economy and the environment by
5 keeping LBAM from attaining damaging levels." Findings p. 8. Another new objective sets a new goal
6 of suppression, containment and control of LBAM in areas with high population densities, and abandons
7 the goal of completely eradicating LBAM from the state. Findings p. 8. A third new objective sets the
8 goal of eradicating "small, discrete LBAM populations within California."¹ Findings p. 8.

9 66. The Findings also assert that the Project is consistent with the USDA's March 15, 2010
10 document "APHIS Draft Response to Petitions for the Reclassification of Light Brown Apple Moth
11 [*Epiphyas postvittana* (Walker)] as a Non-Quarantine Pest." Findings p. 8 (brackets in original). The
12 USDA document specifically found that eradicating LBAM from California was infeasible at this time.

13 67. The Findings state that Alternative MD-3 is not feasible because of the large area of the
14 state that would be subject to aerial application under the alternative, and because "many of the dense
15 LBAM populations are located in or adjacent to areas that qualify as urban." Findings p. 25. The
16 Findings do not explicitly withdraw Alternative MD-3 from the list of potential tools for the LBAM
17 Project, unlike the Final EIR's determination regarding Alternative MMA. *Cf.* Findings p. 25 *with* FEIR
18 p. 2-1. Although the Findings indicate CDFA's reluctance to apply pesticides pursuant to F.A.C. section
19 5771 *et seq.* (regulating aerial pesticide spraying in urban areas), they do not address the *environmental*
20 feasibility of MD-3.

21 **FIRST CAUSE OF ACTION**

22 **(Violation of CEQA for Inadequate Environmental Review)**

23 **(Alleged by All Petitioners Against All Respondents and Real Parties)**

24 68. The paragraphs set forth above are realleged and incorporated herein by reference.
25

26
27 ¹ The remaining goals are: to implement the program in an effective and environmentally
28 safe and responsible manner, to protect the state's resources, to protect the larger environment by
preventing the expansion of LBAM to other states, and to avoid the expense and risks of
permanent quarantines to address persistent LBAM populations statewide. Findings p. 8.

1 69. Petitioners bring this First Cause of Action pursuant to Public Resources Code sections
2 21168 and 21168.5, on the grounds that respondents failed to act in accordance with the law, and
3 committed a prejudicial abuse of discretion, in that they considered and approved the Project without
4 adequately analyzing its potential environmental impacts, alternatives and mitigations as required by
5 CEQA.

6 70. CDFA is a “public agency” within the meaning of CEQA. Pub. Res. Code § 21063.
7 CDFA’s actions in approving and carrying out the Project are subject to the requirements of CEQA.

8 71. The “LBAM Eradication Program” approved by CDFA constitutes a “project” subject to
9 CEQA. Pub. Res. Code § 21065(c). “‘Project’ means the whole of an action, which has a potential for
10 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
11 physical change in the environment,” and refers to the “activity which is being approved and which may
12 be subject to several discretionary approvals by government agencies” rather than to the separate
13 governmental approvals themselves. CEQA Guidelines [14 C.C.R.; “Guidelines”] § 15378(a), (c). In
14 approving the Project and its EIR, respondents violated CEQA in the following respects.

15 **The EIR’s Impact Analysis and Mitigation Measures Are Deficient**

16 72. The Final EIR and its accompanying Findings fail to adequately discuss, evaluate, and
17 mitigate the direct, indirect and cumulative environmental impacts of the LBAM Program as required by
18 Public Resources Code section 21100.

19 73. The Final EIR and its accompanying Findings assert that the LBAM Program alternatives
20 have no significant unmitigable effects on the environment while failing to adequately address the
21 Project’s environmental impacts. For example, their analysis of the air quality, human and ecological
22 health impacts of the Project’s pesticide spraying, including their analysis of the dangerous inhalation
23 risks of fine particles, is inadequate. The Final EIR and its accompanying Findings additionally fail to
24 adequately address the impacts of the Project on special status species, water resources, terrestrial
25 resources, aquatic resources, ecological health, noise, climate change, air quality, public services, human
26 health and land uses. They also fail to adequately address the cumulative impacts of the Project.

27 74. Respondents’ actions in certifying the Final EIR for the Project despite these deficiencies
28 violate their legal duties by failing to conform to the requirements of CEQA and the CEQA Guidelines.

1 By certifying the Final EIR and approving the Project, and the Findings without conforming to CEQA,
2 respondents acted in excess of their jurisdiction and prejudicially abused their discretion. Accordingly,
3 respondents' certification of the Final EIR, and approval of the Project are invalid and should be set aside.

4 **The EIR Failed to Provide a Complete Project Description**

5 75. Guidelines section 15124 provides that the "description of the project shall contain . . . (b)
6 [a] statement of the objectives sought by the proposed project," which is intended to "help the Lead
7 Agency develop a reasonable range of alternatives to evaluate in the EIR" and to "aid the decision makers
8 in preparing findings or a statement of overriding considerations"

9 76. "An accurate, stable and finite project description is the *sine qua non* of a[] . . . legally
10 sufficient EIR." *County of Inyo v. City of Los Angeles* (1977), 71 Cal.App.3d 185, 193. CEQA does not
11 permit an unduly narrow purpose and need statement because an "'impermissibly truncated' project
12 definition severely distort[s] not only the critical project *but the alternatives to the project.*" *County of*
13 *Inyo v City of Los Angeles* (1981) 124 Cal.App.3d 1, 9 (emphasis in original). "Only through an accurate
14 view of the project may affected outsiders and public decision-makers balance the proposal's benefit
15 against its environmental cost, consider mitigation measures, assess the advantage of terminating the
16 proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance." *County of Inyo,*
17 *supra*, 71 Cal.App.3d at 192-93.

18 77. As discussed above, CDFA's initial goal was to "eradicate LBAM from the State of
19 California by 2015." CDFA repeatedly reaffirmed this goal and timeline throughout its DEIR and FEIR.

20 78. In its Findings, however, CDFA decided to modify its objectives to "contain[ing],
21 control[ing], and suppress[ing] LBAM in areas where current LBAM population densities . . . make
22 eradication infeasible at this time" and merely "eradicat[ing] *small, discrete LBAM populations* within
23 California."

24 79. The scope of the newly proposed, planned-to-be-ongoing, LBAM "control" Program is
25 substantially different than the scope of the original, eradication "by 2015" program.

26 80. The purported reasons for this change were that (1) "LBAM has spread to more areas of
27 California, and the density of its populations has increased significantly" and (2) former F.A.C. section
28 6050.1, which supposedly required CDFA to eradicate LBAM, "was repealed by its own terms effective

1 January 1, 2010.” Findings, at 7 ¶¶ 19-20. However, these justifications are facially unreasonable.
2 CDFA fails to explain how LBAM could have “spread” so “significantly” in less than one month.²
3 CDFA also fails to explain why, since F.A.C. section 6050.1 had already been repealed when the Final
4 EIR was published, it waited to modify the Project objectives until after the EIR had been completed and
5 the public comment period closed.

6 81. By substantially modifying the Project’s scope and goals after the Final EIR was already
7 published, CDFA failed to provide the “accurate, stable and finite project description [that] is the *sine*
8 *qua non* of a[] . . . legally sufficient EIR.” *County of Inyo, supra*, 71 Cal.App.3d at 193. Accordingly,
9 CDFA violated CEQA.

10 The No Project Alternative Is Deficient

11 82. CEQA requires every EIR to include a “no project” alternative. Guidelines §
12 15126.6(e)(1). Its purpose “is to allow decisionmakers to compare the impacts of approving the proposed
13 project with the impacts of not approving the proposed project.” *Id.* As with all other CEQA
14 determinations made by agencies, its assessment of the no project alternative’s impacts must be based on
15 substantial evidence.

16 83. Here, CDFA determined that the no project alternative would (1) dramatically increase
17 private pesticide use; (2) increase the risk of damage from wildfires; and (3) damage crops, and
18 accordingly lower agricultural revenues. The DEIR finds all of these impacts to be “potentially
19 significant.” DEIR pp. 3-21, 4-8, 8-55.

20 84. The evidence that CDFA uses to support these conclusions does not in fact support them;
21 CDFA’s conclusions are not based on substantial evidence.

22 85. CDFA thus unlawfully overstated the environmental impacts of the No Program
23 Alternative, and accordingly, understated the environmental impacts of the Program Alternatives by
24 comparison, denying the public its right to “balance the proposal’s benefit against its environmental cost,
25

26 ² As mentioned above, CDFA wrote on February 26, 2010 (when responding to
27 comments in the Final EIR) that “[t]he commenter incorrectly states that LBAM is widely
28 established in California. *At the time of this writing, that statement is not correct.*” Final EIR p.
4-328.

1 . . . assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative)[,] and weigh other
2 alternatives in the balance.” *County of Inyo, supra*, 71 Cal.App.3d at 192-93. CDFA thereby violated
3 CEQA.

4 **CDFA Failed to Adequately Consider, Analyze and Adopt**
5 **Feasible Alternatives and Mitigation Measures**

6 86. CEQA requires that an EIR “describe a range of reasonable alternatives to the project . . .
7 which would feasibly attain most of the basic objectives of the project but would avoid or substantially
8 lessen any of the significant effects of the project, and evaluate the comparative merits of the
9 alternatives.” CEQA Guidelines § 15126.6(a).

10 87. Whether the required “reasonable range” of alternatives was considered is determined by
11 the “rule of reason.” *Id.*; *Fed’n for San Francisco’s Architectural Heritage v. City & County of San*
12 *Francisco* (1980) 106 Cal.App.3d 893, 910. “Agenc[ies are] required to consider project alternatives that
13 might eliminate or reduce [a] Project’s significant adverse environmental effects.” *Friends of the Eel*
14 *River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873.

15 88. As noted above, CDFA repeatedly rejected numerous alternatives based on its belief that
16 they could not feasibly meet its goal of eradication of LBAM. *See, e.g.*, DEIR pp. S-4 through S-5.
17 However, now that CDFA’s goal is no longer solely to eradicate LBAM, but instead to control it, these
18 alternatives are no longer infeasible and warrant additional consideration. The Findings continue to
19 dismiss these alternatives as infeasible without providing sufficient study. For example, CDFA dismisses
20 integrated pest management because it is inconsistent with the Project’s objectives of “containing,
21 controlling, suppressing and eradicating LBAM populations within California.” Findings pp. 34-35.

22 89. The rejected-but-feasible alternatives would “avoid or substantially lessen” the Project’s
23 significant impacts. Guidelines § 15126.6(a).

24 90. Because CDFA dismissed from consideration in the DEIR and the FEIR alternatives and
25 mitigation measures whose feasibility now appears clear, it violated its duty to fully consider feasible
26 alternatives and mitigation measures and to “not approve [this] project[] as proposed if there are feasible
27 alternatives or feasible mitigation measures available which would substantially lessen the significant
28 environmental effects of [this] proposed project[].” Pub. Res. Code §§ 21002; 21002.1(b); 21081(a),(b);

1 Guidelines §§ 15091; 15093.

2 **CDFRA Unlawfully Segmented its Project by Studying a Project of Limited**
3 **Duration But Approving a Project of Unlimited Duration.**

4 91. CEQA requires agencies to prepare EIRs regarding the impacts of their non-exempt
5 “projects” that may have significant environmental impacts. Guidelines § 15064(a)(1). CEQA defines
6 “project” to mean “the whole of an action.” *Id.* § 15378(a). “The term ‘project’ refers to the activity
7 which is being approved and which may be subject to several discretionary approvals by governmental
8 agencies. The term ‘project’ does not mean each separate governmental approval.” *Id.* § 15378(c).
9 Accordingly, agencies “must consider the whole of an action, not simply its constituent parts, when
10 determining whether [the action] will have a significant environmental effect (*Citizens Assoc. For*
11 *Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 [“*Bishop*”]).”
12 Guidelines § 15003(h).

13 92. CEQA’s broad definition of “project” goes hand-in-hand with its mandate that “EIR[s]
14 shall discuss cumulative impacts of . . . project[s]” when those impacts are “significant when viewed in
15 connection with the effects of past projects, the effects of other current projects, and the effects of
16 *probable future projects.*” Guidelines §§ 15130; 15065(a)(3) (emphasis added).

17 93. CEQA thus intends to ensure “that environmental considerations do not become
18 submerged by chopping a large project into many little ones – each with a minimal potential impact on
19 the environment – which cumulatively may have disastrous consequences.” *Bozung v. Local Agency*
20 *Formation Com.* (1975) 13 Cal.3d 263, 283-284. “There exists a real danger in the filing of separate
21 environmental documents for the same project because consideration of the cumulative impact on the
22 environment may never occur.” *Bishop*, 172 Cal.App.3d at 166.

23 94. Here, CDFRA has never attempted to ascertain what environmental consequences the
24 Project will have if it extends beyond 2015. *See, e.g.*, DEIR pp. 3-35 through 3-36 (finding various
25 cumulative agricultural impacts to be insignificant because they were “temporary” and would “last[] only
26 during the eradication period”); 13-21 (greenhouse gas emissions impact is “less than significant,”
27 because program’s “temporary nature . . . would not prevent the state from meeting its [greenhouse gas]
28 reduction goals by 2020”).

1 95. Originally, CDFA justified this omission on the basis of it “ha[ving] concluded that it
2 [wa]s feasible for the Program to eradicate LBAM in California by 2015.” DEIR p. 4-328. CDFA
3 elaborated, “[i]f the Program were not successful in achieving eradication by 2015,
4 then the Program could be continued, which may require additional CEQA analysis.” *Id.*

5 96. However, even though the newly revised control-oriented Project does not purport to end
6 in 2015, CDFA still failed to undertake a long-term cumulative impact analysis. Instead, the Findings
7 simply state that “the Program could be implemented through 2017 within the scope of the analysis of the
8 risk assessments.”³ For example (and for illustrative purposes only), no attempt is made to ascertain
9 whether greenhouse gas impacts will be significant now that the program is no longer planned to be
10 “temporary.” *Cf.* DEIR p. 13-21 (no such impacts because program will end before state must comply
11 with AB 32 in 2020) *with* Findings p. 20 (unexplained statement that there will still be no *even*
12 *potentially* significant greenhouse gas impacts, although program is no longer explicitly planned to
13 terminate before 2020).

14 97. Because CEQA requires agencies to study the environmental impacts of “the whole of
15 [the] action,” CDFA was required to determine the environmental impacts of its entire Project, including
16 the impacts in years after 2015. Guidelines § 15378(a). “[I]t is reasonably foreseeable that the [P]roject
17 will continue for a longer term than seven years. . . .Th[is] future use[] should have been included in the
18 EIR and [its] cumulative effects discussed.” *City of Santee v. County of San Diego* (1989) 214
19 Cal.App.3d 1438, 1454.

20 98. By impermissibly segmenting its Project into seven year increments, CDFA violated
21 CEQA by failing to ascertain the Project’s long-term cumulative impacts.

22 **The EIR Should Have Been Recirculated**

23
24
25 ³ As noted above, CDFA observed that “[s]ome of the EIR text refers to the date of
26 2015,” but claims that “[t]his end date was based on an assumption that the Program would be
27 implemented starting in 2008.” CDFA concluded, “this [2015] date [wa]s representative, not
28 specific.” Findings p. 11 n. 1. CDFA does not explain how the DEIR, which was issued in *July*
2009, could have been reasonably “based on an assumption that the Program would be
implemented starting in *2008*.”

1 99. Guidelines section 15088.5(a) requires agencies “to recirculate an EIR when significant
2 new information is added to the EIR after public notice is given of the availability of the draft EIR . . . but
3 before certification.” New information is deemed “significant” where “the EIR is changed in a way that
4 deprives the public of a meaningful opportunity to comment upon [1] a substantial adverse environmental
5 effect of the project or [2] a feasible way to mitigate or avoid such an effect . . . that the project’s
6 proponents have declined to implement.” *Id.*

7 100. Here, as discussed above, CDFA abruptly changed the Project’s objectives from
8 “eradication” to “control” in its Findings, which were released after the Final EIR was already published.
9 These modifications constitute “new information . . . added to the EIR” within the meaning of Guidelines
10 section 15088.5(a).

11 101. This change in the Project’s objectives will extend the Project’s lifetime from 2015 until
12 some undefined future date. As alleged above, this extension to the Project’s planned life will have a new
13 “substantial adverse environmental effect” because the EIR assumes throughout its impact analyses that
14 the Project will abruptly end in 2015. *Id.* Accordingly, this new information is “significant” within the
15 meaning of Guidelines section 15088.5(a).

16 102. Furthermore, CDFA’s decision to switch the Project’s goals from eradication to control
17 will additionally increase the amount of pesticides used if CDFA’s assumption that increased pesticide
18 use will occur under the No Program Alternative and Program Alternatives is correct. The FEIR states
19 that the No Program Alternative’s pesticide use will “occur over the same time frame” as, and in
20 conjunction with, the Program Alternatives, “until . . . eradication is . . . accomplished.” FEIR p. 4-241.
21 As alleged above, CDFA found that private parties will use pesticides until LBAM is eradicated, so by
22 deciding not to eradicate LBAM, CDFA has created a new “substantial adverse environmental effect”
23 from all of the pesticides that will now need to be used by private parties between 2015 and whenever
24 LBAM actually is eradicated.⁴ Guidelines § 15088.5(a). This new information is therefore “significant”

25
26
27 ⁴ As alleged above, petitioners dispute the adequacy of the DEIR’s and FEIR’s discussion
28 of the impacts of the No Program Alternative. Petitioners here assume *solely for the sake of*
argument that CDFA’s No Project Alternative impact assessment is correct regarding the use of
pesticides by private parties.

1 within the meaning of Guidelines section 15088.5(a).

2 103. Moreover, as also alleged above, several mitigation measures are now feasible to meet the
3 Project's new objectives, but CDFA has nonetheless declined to implement them. These now-feasible
4 mitigation measures would "mitigate or avoid" the Project's significant environmental impacts. *Id.*
5 Petitioners were accordingly "deprived . . . of a meaningful opportunity to comment upon" these newly
6 "feasible way[s] to mitigate or avoid" the Project's impacts. *Id.*

7 104. Because CDFA has substantially changed the Project, and because these changes would
8 both have new "substantial adverse environmental effect[s]" and render "way[s] to mitigate or avoid" the
9 Project's impacts newly feasible, CDFA was required to recirculate the EIR for public comment and its
10 failure to do so violated CEQA. *Id.*

11 **PRAYER FOR RELIEF**

12 WHEREFORE, petitioners pray for the following relief:

13 1. Petitioners seek this Court's alternative and peremptory writs of mandate and declaratory
14 judgment setting aside and respondents' actions purporting to approve the Light Brown Apple Moth
15 Eradication Program, to certify its FEIR, and approve its accompanying Findings, on the grounds that all
16 such approvals and certification violate the CEQA.

17 2. For a temporary restraining order, stay order, and preliminary and permanent
18 injunctions, enjoining and restraining respondents and their officials, agents, employees, representatives,
19 real parties in interest, and all persons acting in concert or participating with them from performing in any
20 manner any other duty or obligation, taking any other action to implement the Project that could result in
21 any change or alteration to the physical environment pending compliance with CEQA.

22 3. For attorneys' fees under Code of Civil Procedure section 1021.5;

23 4. For costs incurred in this action; and

24 ///

25 ///

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1 5. For such other equitable or legal relief as the Court may deem just and proper.

2 Dated: April 19, 2010

Respectfully submitted,

3 LAW OFFICES OF STEPHAN C VOLKER

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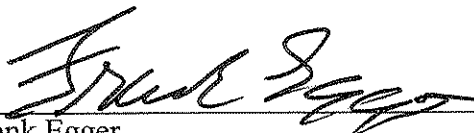
5
6 By: STEPHAN C. VOLKER
7 Attorney for Petitioners and Plaintiffs
8 North Coast Rivers Alliance, *et al.*

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VERIFICATION

I, Frank Egger, am a member of the Board of Directors of petitioner and plaintiff North Coast Rivers Alliance and also one of the individual petitioners/plaintiffs in this action. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorney's Fees and know its contents. The facts therein alleged are true and correct, and are based on documents within the administrative record underlying the approvals challenged herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed in Oakland, California, on April 19, 2010.



Frank Egger