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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,)	Case No.: 07-2794-JCS
a non-profit corporation,)	
Plaintiff,)	STIPULATED INJUNCTION AND
)	[PROPOSED] ORDER
v.)	
ENVIRONMENTAL PROTECTION)	
AGENCY <i>et al.</i> ,)	
Defendants,)	
)	
)	

1 Plaintiff Center for Biological Diversity (hereinafter “the Center”); and Defendant
2 Environmental Protection Agency (hereinafter “EPA”) (collectively hereinafter “Parties”), by
3 and through the undersigned counsel, state as follows:

4 WHEREAS, on May 30, 2007, the Center filed a complaint for declaratory and
5 injunctive relief pursuant to Section 7 of the Endangered Species Act (“ESA”) in the Northern
6 District of California, which alleged that the EPA had failed to comply with Section 7 regarding
7 the potential impacts of 43 pesticide active ingredients upon the tidewater goby, delta smelt,
8 California clapper rail, salt marsh harvest mouse, California tiger salamander, San Francisco
9 garter snake, California freshwater shrimp, San Joaquin kit fox, Alameda whipsnake, valley
10 elderberry longhorn beetle, and bay checkerspot butterfly, federally protected species listed as
11 endangered or threatened under the Endangered Species Act.¹

12 WHEREAS, as part of this Stipulated Injunction Plaintiff will file an amended complaint
13 to include an additional 31 pesticide active ingredients for which Plaintiff similarly alleges that
14 EPA has failed to comply with Section 7 of the ESA regarding their potential impacts on the
15 species listed immediately above (hereinafter, all 74 pesticide active ingredients at issue will
16 collectively be referred to as “Pesticides”).

17 WHEREAS, Plaintiff maintains that the Pesticides can adversely affect the tidewater
18 goby, delta smelt, California clapper rail, salt marsh harvest mouse, California tiger salamander,
19 San Francisco garter snake, California freshwater shrimp, San Joaquin kit fox, Alameda
20 whipsnake, valley elderberry longhorn beetle, and bay checkerspot butterfly and their habitats in
21 the greater San Francisco Bay Area, including the Bay Delta, specifically covering the following
22 California counties — Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, and
23 San Mateo;²

24
25
26 ¹ Plaintiff’s Complaint originally raised claims on the effects of 47 pesticides. Four of those pesticides,
27 fenamiphos, pival, pebulate and sulfotep, are no longer registered for use in California and thus are not included as
28 part of this settlement. In agreeing to this settlement, Plaintiff does not waive its rights to reraise claims on these
pesticides should their California registrations be renewed.

² Plaintiff’s Complaint originally identified San Francisco County as a covered county as well. Subsequently, it
was determined that none of the species at issue (or their habitat) are currently located in San Francisco County. As
a result, the scope of this Stipulated Injunction is now limited to the 8 counties identified in the text above.

1 WHEREAS, the ESA implementing regulations provide that before any need to engage
2 in consultation might arise, an agency must first make an “effects determination;”

3 WHEREAS, EPA maintains that it cannot determine the effects, if any, of the Pesticides
4 on the tidewater goby, delta smelt, California clapper rail, salt marsh harvest mouse, California
5 tiger salamander, San Francisco garter snake, California freshwater shrimp, San Joaquin kit fox,
6 Alameda whipsnake, valley elderberry longhorn beetle, and bay checkerspot butterfly, and
7 define appropriate protective measures, if any, until they have completed further scientific
8 analyses, which may include, but are not limited to, further review under the Federal Insecticide,
9 Fungicide, and Rodenticide Act (“FIFRA”), §§ 7 U.S.C. 136-136(y), effects determinations
10 made pursuant to the ESA, or consultation with the United States Fish and Wildlife Service
11 under the ESA, as appropriate;

12 WHEREAS, the Parties, through their authorized representatives, have reached
13 agreement on the terms of a settlement, which is captured in the form of this Stipulated
14 Injunction, that they consider to be a just, fair, adequate, and equitable resolution of the issues in
15 this case;

16 WHEREAS, all Parties agree that this Stipulated Injunction is in the public interest and
17 is an appropriate way to resolve the remaining disputed issues;

18 WHEREAS, the EPA published in the Federal Register a request for public comment on
19 the terms of this Stipulated Injunction, subsequently reviewed all comments received, and
20 thereafter conferred with the Parties with respect to any comments that EPA felt warranted
21 reconsideration or revision of any provision in this Stipulated Injunction, with any resulting
22 changes reflected herein;

23 NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

24 **SECTION 7 CONSULTATION SCHEDULE**

25 **1. Compliance with Section 7(a)(2) of the Endangered Species Act.**

26 The EPA shall make effects determinations and initiate consultation, as appropriate, with
27 the United States Fish and Wildlife Service, pursuant to applicable regulations in effect at the
28 time when the determination is made, regarding the potential effects of the Pesticides on the

tidewater goby, delta smelt, California clapper rail, salt marsh harvest mouse, California tiger salamander, San Francisco garter snake, California freshwater shrimp, San Joaquin kit fox, Alameda whipsnake, valley elderberry longhorn beetle, and bay checkerspot butterfly in the greater San Francisco Bay Area, including the Bay Delta, specifically covering the following California counties — Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, and San Mateo.³

2. Effects Determinations

a. Schedule for Compliance for 43 Pesticides in Original Complaint Plus 1 of the Pesticides Added via Amended Complaint

EPA shall by October 20, 2009, make the effects determinations described in section 1 for each of the following active ingredients for the species listed:⁴

<u>Pesticide</u>	<u>Species</u>
Chlorpyrifos	delta smelt, California clapper rail, salt marsh harvest mouse, California tiger salamander, San Francisco garter snake, California freshwater shrimp, San Joaquin kit fox, valley elderberry longhorn beetle, bay checkerspot butterfly
Strychnine	California tiger salamander, San Joaquin kit fox
Thiobencarb	delta smelt
Trifluralin	delta smelt, San Francisco garter snake, San Joaquin kit fox

³ As clarified in section 2 of this Stipulated Injunction, EPA will not be undertaking this obligation as to each of the Pesticides at issue for each of the named species, but rather as to a specified subset of the Pesticides at issue for each named species.

⁴ It originally was envisioned that EPA would make effect determinations for 10 active ingredients in connection with this portion of the effects determination schedule. The 10 active ingredients included the 4 specifically identified above as well as 2,4-D, alachlor, atrazine, endosulfan, permethrin and phorate. On October 20, 2008, EPA completed effect determinations for permethrin for the California clapper rail, the salt marsh harvest mouse, the San Francisco garter snake, and the Bay checkerspot butterfly; and for phorate for the San Joaquin kit fox, valley elderberry-longhorn beetle, and the Bay Checkerspot butterfly. On February 20, 2009, EPA completed effect determinations for 2,4-D for the Alameda whipsnake, and for atrazine for the delta smelt. On June 20, 2009 EPA completed effect determinations for alachlor for the delta smelt; and for endosulfan for the salt marsh harvest mouse, California tiger salamander, San Francisco garter snake, San Joaquin kit fox, valley elderberry longhorn beetle, and the bay checkerspot butterfly.

EPA shall make effects determinations for the following active ingredients for the specific species listed at a minimum rate of 4 per quarter, with the first quarter ending on March 31, 2010 so that EPA completes these effects determinations by December 31, 2011.

<u>Pesticide</u>	<u>Species</u>
Acephate	California clapper rail, salt marsh harvest mouse, California tiger salamander, San Francisco garter snake, California freshwater shrimp, San Joaquin kit fox, valley elderberry longhorn beetle, bay checkerspot butterfly
Acrolein	Alameda whipsnake
Aldicarb	San Joaquin kit fox, valley elderberry longhorn beetle
Aluminum phosphide	California tiger salamander, San Francisco garter snake, San Joaquin kit fox, Alameda whipsnake
Azinphos-methyl	California clapper rail, California tiger salamander, San Francisco garter snake, San Joaquin kit fox, valley elderberry longhorn beetle, bay checkerspot butterfly
Brodifacoum	salt marsh harvest mouse, San Joaquin kit fox, Alameda whipsnake
Bromadiolone	salt marsh harvest mouse, San Joaquin kit fox, Alameda whipsnake
Bromethalin	salt marsh harvest mouse, Alameda whipsnake
Carbaryl	delta smelt
Carbofuran	delta smelt, San Francisco garter snake, San Joaquin kit fox, valley elderberry longhorn beetle

1	Chlorophacinone	salt marsh harvest mouse, California tiger
2		salamander, San Joaquin kit fox, Alameda
3		whipsnake
4	Cholecalciferol	salt marsh harvest mouse
5	Diazinon	tidewater goby, delta smelt
6	Difethialone	Alameda whipsnake
7	Diphacinone	salt marsh harvest mouse, California tiger
8		salamander, San Joaquin kit fox, Alameda
9		whipsnake
10	Diquat dibromide	delta smelt
11	EPTC (eptam)	delta smelt
12	Magnesium phosphide	San Francisco garter snake, San Joaquin kit fox,
13		Alameda whipsnake
14	Malathion	delta smelt, California tiger salamander
15	Maneb	California tiger salamander
16	Mancozeb	California tiger salamander
17	Metam sodium	California tiger salamander
18	Methoprene	California tiger salamander
19	Methyl bromide	California tiger salamander
20	Metolachlor	delta smelt
21	Naled	California clapper rail, San Francisco garter snake,
22		San Joaquin kit fox, valley elderberry longhorn
23		beetle, bay checkerspot butterfly
24	Oryzalin	California tiger salamander
25	Permethrin	Valley elderberry longhorn beetle
26	Phosmet	California tiger salamander
27	Potassium nitrate	San Francisco garter snake, San Joaquin kit fox,
28		Alameda whipsnake

S-metolachlor	delta smelt, California tiger salamander
Simazine	delta smelt
Sodium nitrate	San Francisco garter snake, San Joaquin kit fox, Alameda whipsnake
Warfarin	salt marsh harvest mouse, Alameda whipsnake
Zinc phosphide	salt marsh harvest mouse, Alameda whipsnake

Upon completion of an effects determination in accordance with the preceding effects determination schedule, EPA will within 7 business days proceed to initiate, if necessary, consultation in accordance with Section 7(a)(2) of the ESA and the implementing ESA consultation regulations.

a. Schedule for Compliance for Remaining Pesticides Added via Amended Complaint

As part of this Stipulated Injunction, Plaintiff will file an amended complaint to include the pesticide active ingredients listed below.⁵ EPA shall make effects determinations for the following pesticides for the specific species listed at a minimum rate of no less than 3 per quarter, with the first quarter ending March 31, 2012, so that EPA completes all effects determinations by June 30, 2014.⁶

<u>Pesticide</u>	<u>Species</u>
Bensulide, Beta-cyfluthrin, Bifenthrin, Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Esfenvalerate, Ethoprop, Fenpropathrin,	San Francisco garter snake, California tiger salamander, tidewater goby, California clapper rail, California freshwater shrimp, delta smelt, valley elderberry longhorn beetle, and bay checkerspot butterfly.

⁵ Although strychnine was identified in the original Complaint, Plaintiff's amended complaint will add 3 more species for which effect determinations for strychnine will be undertaken.

⁶ EPA may, in its discretion, and as may be appropriate, complete the effects determinations for these pesticides sooner than any scheduled due dates.

1	Fluvalinate, Imidacloprid,	
2	Methamidophos, Methidathion,	
3	Methomyl, Oxydemeton-methyl,	
4	Oxyfluorfen, Phenothrin,	
5	Propargite, Resmethrin,	
6	Tetramethrin, Tralomethrin, and	
7	Zeta-cypermethrin	
8		
9	Chlorothalonil:	San Francisco garter snake, California tiger
10		salamander, tidewater goby, California clapper rail,
11		California freshwater shrimp, delta smelt, bay
12		checkerspot butterfly
13		
14	Fipronil:	San Francisco garter snake, California tiger
15		salamander, tidewater goby, California clapper rail,
16		California freshwater shrimp, delta smelt, bay
17		checkerspot butterfly
18		
19	PCNB:	San Francisco garter snake, California tiger
20		salamander, tidewater goby, California clapper rail,
21		California freshwater shrimp, delta smelt, bay
22		checkerspot butterfly
23		
24	Pendimethalin:	bay checkerspot butterfly
25		
26	Sodium cyanide:	San Joaquin kit fox
27	Strychnine:	Alameda whipsnake, salt marsh harvest mouse, San
28		Francisco garter snake

1
2 **b. Urban Pesticides**

3 In making effects determinations for the Pesticides, EPA specifically shall consider the
4 contribution to effects, arising from the use of the urban pesticides subject to this Order, when
5 used in areas with impervious surfaces. Urban pesticides subject to this Stipulated Injunction
6 are: Acephate, Alachlor, Atrazine, Bensulide, Beta-cyfluthrin, Bifenthrin, Bromethalin,
7 Carbaryl, Chlorophacinone, Chlorothalonil, Cholecalciferol, Cyfluthrin, Cyhalothrin (lambda),
8 Cypermethrin, Deltamethrin, Diphacinone, Diquat dibromide, Disulfoton, Esfenvalerate,
9 Fenpropathrin, Fipronil, Imidacloprid, Malathion, Methoprene, Naled, Oryzalin, Oxyfluorfen,
10 PCNB, Pendimethalin, Permethrin, Phenothrin, Potassium nitrate, Resmethrin, Simazine,
11 Sodium nitrate, Strychnine, Tetramethrin, Tralomethrin, Trifluralin, Warfarin, and Zeta-
12 cypermethrin.⁷

13 **INTERIM INJUNCTIVE RELIEF**

14 **2. Use Authorizations Enjoined, Vacated, and Set Aside.**

15 The EPA's authorization of any of the Pesticides identified below on a species-by-
16 species basis is hereby ENJOINED, VACATED and SET ASIDE as follows, except as provided
17 by the exclusions, exemptions, and termination provisions set forth in paragraphs 4, 5, 6, and 7:
18
19
20
21
22
23

24 ⁷ As noted in footnote 4, on February 20, 2009, EPA completed an effects determination for atrazine for the delta
25 smelt, the only effects determination that had been contemplated for atrazine under this Stipulated Injunction.
26 Similarly, on October 20, 2008, EPA completed an effects determination for permethrin for the California clapper
27 rail, the salt marsh harvest mouse, the San Francisco garter snake, and the Bay checkerspot butterfly. In rendering
28 these effects determinations, EPA did consider the contribution to effects when these pesticides are used in areas
with impervious surfaces. Because EPA still is required under this Stipulated Injunction to complete an effects
determination for permethrin for the Valley elderberry longhorn beetle, and because the term "Urban Pesticides" is
used later in Paragraphs 11 and 12 of this Stipulated Injunction to identify those pesticides subject to EPA's point
of sale commitments, both atrazine and permethrin will continue to be included here in this list of "Urban
Pesticides."

1 **Tidewater Goby**

2 EPA's authorization of any use of Bensulide, Beta-cyfluthrin, Bifenthrin, Chlorothalonil,
3 Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Diazinon, Dimethoate,
4 Disulfoton, Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid,
5 Methamidophos, Methidathion, Methomyl, Oxydemeton-methyl, Oxyfluorfen, PCNB,
6 Phenothrin, Propargite, Resmethrin, Tetramethrin, Tralomethrin, and Zeta-cypermethrin is
7 hereby ENJOINED, VACATED, and SET ASIDE in

8 1. all areas within 100 feet of the habitat described below if applied by ground; and

9 2. all areas within 400 feet of the habitat described below if applied by air,

10 **Applicable Habitat.** For the Tidewater goby, "habitat" means lagoons, estuaries, and
11 backwater marshes that are adjacent to the Pacific Ocean, and freshwater streams
12 upgradient and tributary to brackish habitats, but only to the extent that any such
13 ecological features are found within the 8 counties specifically identified in the
14 Complaint (and in this Stipulated Injunction) in the following sections of California:⁸
15 M01S06W21, M07S05W33, M05N10W02, M05N10W03, M05N10W14,
16 M05N10W15, M05N10W23, M06N10W35, M06N11W14, M06N11W15,
17 M06N11W22, M07S05W15, M07S05W16, M08S05W04, M08S05W05,
18 M08S05W09, M08S05W21

19
20 **Delta Smelt**

21 EPA's authorization of any use of Alachlor, Atrazine, Bensulide, Beta-cyfluthrin,
22 Bifenthrin, Carbaryl, Carbofuran, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin
23 (lambda), Cypermethrin, Deltamethrin, Diazinon, Dimethoate, Diquat dibromide, Disulfoton,
24 EPTC (eptam), Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid,
25 Malathion, Methamidophos, Methidathion, Methomyl, Metolachlor, Oxydemeton-methyl,
26 Oxyfluorfen, PCNB, Phenothrin, Propargite, Resmethrin, S-metolachlor, Simazine,
27

28 ⁸ All section numbers in this document are based on the California Department of Pesticides Regulation PLSNET coverage.

1 Tetramethrin, Thiobencarb, Tralomethrin, Trifluralin and Zeta-cypermethrin is hereby
2 ENJOINED, VACATED, and SET ASIDE in

- 3 1. all areas within 100 feet of the habitat described below if applied by ground, and
- 4 2. all areas within 400 feet of the habitat described below if applied by air, unless
- 5 application is made in compliance with the Dormant Spray Regulations developed by the
- 6 California Department of Pesticide Regulations, 3 Cal. Code Reg. § 6960, in which case a
- 7 100- foot buffer would apply.

8 **Applicable habitat.** For the delta smelt, “habitat” means all water and all
9 submerged lands below ordinary high water, freshwater streams that drain into the
10 Bay, and channels with tidal influence, but only to the extent that any such
11 ecological features are found within the 8 counties specifically identified in the
12 Complaint (and in this Stipulated Injunction) in either (1) critical habitat
13 designated for the delta smelt by the U.S. Fish and Wildlife Service (FWS) (59
14 Fed. Reg. 65256), as depicted by the FWS at <http://crithab.fws.gov/>, or (2) in the
15 following sections of California: M03N04W02, M03N04W06, M03N04W09,
16 M03N04W16, M04N04W32 .

17 18 **California Clapper Rail**

19 EPA's authorization of any use of Acephate, Azinphos-Methyl, Bensulide, Beta-
20 cyfluthrin, Bifenthrin, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda),
21 Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Esfenvalerate, Ethoprop, Fenpropathrin,
22 Fipronil, Fluvalinate, Imidacloprid, Methamidophos, Methidathion, Methomyl, Naled,
23 Oxydemeton-methyl, Oxyfluorfen, PCNB, Permethrin, Phenothrin, Propargite, Resmethrin,
24 Tetramethrin, Tralomethrin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and
25 SET ASIDE in

- 26 1. all areas within 200 feet of the habitat described below if applied by ground or
- 27 air,

Applicable Habitat. For the California clapper rail, “habitat” means salt and brackish water marshes extending up to the high water line for tidal flow and all adjacent areas either occurring within 100 feet of such marsh habitat or constituting cordgrass/pickleweed habitat, as shown in Attachment A, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in the following sections of California: M01N04W19, M01N04W20, M01N04W29, M01N04W30, M01N06W10, M01N06W11, M01N06W14, M01N06W15, M01N06W22, M01N06W23, M01S04W15, M01S04W16, M01S04W20, M01S04W21, M01S04W22, M02N01W05, M02N01W06, M02N02W01, M02N02W02, M02N02W03, M02N02W04, M02N02W09, M02N02W10, M02N04W20, M02N05W19, M02N06W02, M02N06W03, M02N06W10, M02N06W11, M02N06W14, M02N06W15, M02N06W16, M02N06W21, M02N06W23, M02N06W24, M02S03W17, M02S03W18, M02S03W19, M02S03W20, M02S03W21, M02S03W28, M02S03W29, M02S04W13, M02S04W14, M02S04W24, M03N06W03, M03N06W04, M03N06W09, M03N06W10, M03N06W19, M03N06W20, M03N06W21, M03N06W22, M03N06W26, M03N06W28, M03N06W35, M03N01W19, M03N01W30, M03N01W31, M03N02W03, M03N02W04, M03N02W10, M03N02W21, M03N02W24, M03N02W28, M03N02W29, M03N02W31, M03N02W32, M03N03W27, M03N03W28, M03N03W33, M03N03W34, M03N04W01, M03N04W02, M03N04W11, M03N04W25, M03N04W26, M03N04W35, M03N04W36, M03S03W10, M03S03W11, M03S03W14, M03S03W15, M03S03W23, M03S03W24, M03S03W25, M03S03W26, M03S03W35, M03S03W36, M03S05W27, M04N01W04, M04N01W05, M04N01W06, M04N01W16, M04N01W17, M04N01W18, M04N01W19, M04N01W20, M04N01W21, M04N02W12, M04N02W13, M04N02W14, M04N02W26, M04N04W03, M04N04W04, M04N04W08, M04N04W09, M04N04W10, M04N04W16, M04N04W17,

M04N04W20, M04N04W34, M04N04W35, M04N05W08, M04N05W09,
M04N05W15, M04N05W16, M04N05W17, M04N05W21, M04N05W23,
M04N05W24, M04N05W27, M04N05W28, M04N05W33, M04N05W34,
M04N10W11, M04S03W01, M04S03W31, M04S03W32, M04S03W33,
M04S04W16, M04S04W17, M04S04W22, M05N01W32, M05N01W33,
M05S02W02, M05S02W03, M05S02W04, M05S02W08, M05S02W09,
M05S02W10, M05S02W13, M05S02W14, M05S02W15, M05S02W16,
M05S02W17, M05S02W23, M05S02W24, M05S02W29, M05S02W30,
M05S02W31, M05S02W32, M05S03W03, M05S03W04, M05S03W05,
M05S03W06, M05S03W07, M05S03W08, M05S03W09, M05S03W10,
M05S03W14, M05S03W15, M05S03W16, M05S03W22, M05S04W01,
M05S04W12, M06S02W04, M06S02W09.

Salt Marsh Harvest Mouse

EPA's authorization of any use of Acephate, Brodifacoum, Bromadiolone, Bromethalin, Chlorophacinone, Chlorpyrifos, Cholecalciferol, Diphacinone, Endosulfan, Permethrin, Strychnine, Warfarin, and Zinc phosphide is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 200 feet of the habitat described below if applied by ground or air,

Applicable Habitat. For the salt marsh harvest mouse, “habitat” means salt and brackish water marshes extending up to the high water line for tidal flow and all adjacent areas either occurring within 100 feet of such marsh habitat or constituting cordgrass/pickleweed habitat, as shown in Attachment A, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in the following sections of California: M01N06W02, M01N06W10, M01N06W11, M01N06W14, M01N06W15, M01N06W22, M01N06W23, M02N01E05,

1 M02N01E07, M02N01W01, M02N01W05, M02N01W06, M02N01W12,
2 M02N02W01, M02N02W02, M02N02W03, M02N02W04, M02N02W09,
3 M02N02W10, M02N02W11, M02N02W15, M02N02W16, M02N02W17,
4 M02N05W25, M03N01E05, M03N01E06, M03N01E07, M03N01E08,
5 M03N01E17, M03N01E18, M03N01E20, M03N01E21, M03N01E22,
6 M03N01E25, M03N01E26, M03N01E27, M03N01E28, M03N01E29,
7 M03N01E30, M03N01E31, M03N01E32, M03N01E33, M03N06W03,
8 M03N06W04, M03N06W05, M03N06W09, M03N06W10, M03N01W02,
9 M03N01W03, M03N01W04, M03N01W09, M03N01W10, M03N01W11,
10 M03N01W12, M03N01W13, M03N01W14, M03N01W15, M03N01W16,
11 M03N01W30, M03N01W31, M03N02W03, M03N02W10, M03N02W15,
12 M03N02W25, M03N02W26, M03N02W29, M03N02W30, M03N02W31,
13 M03N02W32, M03N02W35, M03N02W36, M03N03W28, M03N04W01,
14 M03N04W02, M03N04W05, M03N04W06, M03N04W08, M03N04W09,
15 M03N04W10, M03N04W11, M03N04W14, M03N04W15, M03N04W16,
16 M03N04W22, M03N04W23, M03N04W24, M03N04W25, M03N04W26,
17 M03N04W27, M03N04W35, M03N04W36, M03N05W01, M03N05W05,
18 M03N05W06, M03N05W07, M03N05W08, M03S02W31, M03S03W10,
19 M03S03W11, M03S03W14, M03S03W15, M03S03W36, M04N01E19,
20 M04N01W04, M04N01W05, M04N01W06, M04N01W07, M04N01W16,
21 M04N01W17, M04N01W18, M04N01W19, M04N01W21, M04N01W22,
22 M04N01W24, M04N01W27, M04N01W28, M04N01W29, M04N01W32,
23 M04N01W33, M04N02W01, M04N02W02, M04N02W12, M04N02W13,
24 M04N02W14, M04N02W19, M04N02W22, M04N02W27, M04N02W28,
25 M04N04W04, M04N04W08, M04N04W09, M04N04W16, M04N04W17,
26 M04N04W20, M04N04W32, M04N04W35, M04N05W15, M04N05W16,
27 M04N05W21, M04N05W24, M04N05W28, M04N05W32, M04N05W33,
28 M04N05W34, M04N05W35, M04N05W36, M04N06W06, M04N06W07,

M04N06W08, M04N06W17, M04N06W18, M04N06W19, M04N06W20,
M04N06W21, M04N06W28, M04N06W29, M04N06W30, M04N06W32,
M04N06W33, M04N07W01, M04N07W02, M04N07W03, M04N07W12,
M04N07W13, M04N07W24, M04S02W27, M04S02W28, M04S03W31,
M04S03W32, M04S03W33, M05N01W31, M05N01W32, M05N01W33,
M05N02W25, M05N02W35, M05N02W36, M05N04W33, M05N07W34,
M05N07W35, M05S01W25, M05S01W26, M05S01W33, M05S01W34,
M05S01W35, M05S01W36, M05S02W02, M05S02W03, M05S02W04,
M05S02W08, M05S02W09, M05S02W10, M05S02W16, M05S02W17,
M05S02W19, M05S02W25, M05S02W26, M05S02W29, M05S02W30,
M05S02W32, M05S03W04, M05S03W05, M05S03W06, M05S03W07,
M05S03W08, M05S03W15, M05S03W17, M05S03W18, M05S03W22,
M05S03W24, M05S04W01, M05S04W12, M06S01W02, M06S01W03,
M06S01W04, M06S01W06, M06S01W07, M06S01W09, M06S01W10,
M06S02W01, M06S02W02, M06S02W03, M06S02W05, M06S02W10,
M06S02W11.

California Tiger Salamander

EPA's authorization of any use of Acephate, Aluminum Phosphide, Azinphos-methyl, Bensulide, Beta-cyfluthrin, Bifenthrin, Chlorophacinone, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Diphacinone, Disulfoton, Endosulfan, Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid, Malathion, Maneb, Mancozeb, Metam sodium, Methamidophos, Methidathion, Methomyl, Methoprene, Methyl Bromide, Oryzalin, Oxydemeton-methyl, Oxyfluorfen, PCNB, Phenothrin, Phosmet, Propargite, Resmethrin, S-metolachlor, Strychnine, Tetramethrin, Tralomethrin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 200 feet of the habitat described below if applied by ground; and
2. all areas within 400 feet of the habitat described below if applied by air,

Applicable Habitat. For the California tiger salamander, “habitat” means fresh-water (including natural or manmade (e.g., stock) ponds, slow-moving streams or pools within streams, vernal pools, and other ephemeral or permanent water bodies which typically support inundation during winter rains and hold water for a minimum of 12 weeks in a year of average rainfall, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in either (1) critical habitat designated for the California tiger salamander by the FWS (70 Fed. Reg. 49380), as depicted by the FWS at <http://crithab.fws.gov/>, or (2) in the following sections of California: M01N01E01, M01N01E02, M01N01E03, M01N01E04, M01N01E12, M01N01E13, M01N01E20, M01N01E23, M01N01E24, M01N01E28, M01N01W02, M01N02E05, M01N02E06, M01N02E07, M01N02E08, M01N02E16, M01N02E17, M01N02E18, M01N02E26, M01N02E27, M01N02E28, M01N02E33, M01N02E34, M01N02E35, M01N02E36, M01S01E15, M01S01E16, M01S02E01, M01S02E02, M01S02E03, M01S02E10, M01S02E11, M01S02E12, M01S02E13, M01S02E14, M01S02E15, M01S02E16, M01S02E17, M01S02E20, M01S02E21, M01S02E22, M01S02E23, M01S02E24, M01S02E25, M01S02E26, M01S02E27, M01S02E29, M01S02E33, M01S02E34, M01S02E35, M01S02E36, M01S03E04, M01S03E05, M01S03E06, M01S03E07, M01S03E08, M01S03E09, M01S03E17, M01S03E18, M01S03E19, M01S03E20, M01S03E21, M01S03E22, M01S03E23, M01S03E26, M01S03E27, M01S03E28, M01S03E29, M01S03E30, M01S03E31, M01S03E32, M01S03E35, M01S03E36, M02N01E28, M02N01E30, M02N01E33, M02N01W21, M02N01W22, M02N01W25, M02N01W26, M02N01W27, M02N01W28, M02N01W33, M02N01W34, M02N01W35, M02N01W36, M02S01E04, M02S01E08, M02S01E09, M02S01E16, M02S01E17, M02S01E20, M02S01E21, M02S01E22, M02S01E24, M02S01E25, M02S01E26, M02S01E27, M02S01E28, M02S01E33, M02S01E34, M02S01E35, M02S01E36, M02S02E01, M02S02E02, M02S02E03, M02S02E04, M02S02E09, M02S02E10, M02S02E11, M02S02E12, M02S02E13, M02S02E14, M02S02E15, M02S02E25, M02S02E26, M02S02E27,

1 M02S02E28, M02S02E31, M02S02E33, M02S02E34, M02S02E35, M02S02E36,
2 M02S03E01, M02S03E02, M02S03E06, M02S03E08, M02S03E09, M02S03E10,
3 M02S03E16, M02S03E17, M02S03E18, M02S03E19, M02S03E20, M02S03E21,
4 M02S03E22, M02S03E23, M02S03E24, M02S03E26, M02S03E29, M02S03E30,
5 M02S03E31, M02S03E32, M02S03E33, M02S03E34, M02S03E35, M02S04E19,
6 M03S01E01, M03S01E02, M03S01E03, M03S01E14, M03S01E15, M03S01E22,
7 M03S01E23, M03S01E24, M03S01E25, M03S01E27, M03S01E28, M03S01E34,
8 M03S01E35, M03S01E36, M03S02E01, M03S02E04, M03S02E05, M03S02E12,
9 M03S02E13, M03S02E15, M03S02E16, M03S02E19, M03S02E21, M03S02E22,
10 M03S02E24, M03S02E30, M03S02E31, M03S02E32, M03S02E35, M03S03E04,
11 M03S03E05, M03S03E06, M03S03E07, M03S03E08, M03S03E10, M03S03E12,
12 M03S03E18, M03S03E19, M03S03E20, M03S03E21, M03S03E23, M03S03E25,
13 M03S03E26, M03S03E27, M03S03E28, M03S03E29, M03S03E30, M03S03E35,
14 M03S03E36, M03S04E17, M03S04E29, M03S04E30, M03S04E31, M03S04E32,
15 M04N01E34, M04N01W10, M04N01W11, M04S01E01, M04S01E02, M04S01E03,
16 M04S01E04, M04S01E09, M04S01E10, M04S01E11, M04S01E14, M04S01E16,
17 M04S01E17, M04S01E18, M04S01E22, M04S01E24, M04S01E27, M04S01E28,
18 M04S01E29, M04S01E33, M04S01E34, M04S01E35, M04S01W13, M04S01W24,
19 M04S02E07, M04S02E12, M04S02E13, M04S02E17, M04S02E18, M04S02E27,
20 M04S02E35, M04S02E36, M04S03E01, M04S03E07, M04S03E18, M05N01E07,
21 M05N01E14, M05N01E16, M05N01E17, M05N01E18, M05N01E19, M05N01E20,
22 M05N01E21, M05N01E28, M05N01E29, M05N01E30, M05N01W10, M05N01W12,
23 M05N01W13, M05N01W14, M05N01W15, M05N08W03, M05N08W04,
24 M05N08W11, M05S01E02, M05S01E12, M05S01E19, M05S01E20, M05S01E23,
25 M05S01E30, M05S01W03, M05S01W15, M05S01W16, M05S01W21, M05S01W22,
26 M05S02E01, M05S02E08, M05S02E09, M05S02E10, M05S02E11, M05S03E06,
27 M05S03W34, M06N07W31, M06N08W03, M06N08W04, M06N08W05,
28 M06N08W06, M06N08W07, M06N08W08, M06N08W09, M06N08W10,

M06N08W11, M06N08W14, M06N08W15, M06N08W16, M06N08W22,
M06N08W26, M06N08W27, M06N08W32, M06N08W34, M06N08W35,
M06N08W36, M06S02E22, M06S02E23, M06S02E24, M06S02E25, M06S02E26,
M06S02E27, M06S02E35, M06S02E36, M06S03E31, M06S03W03, M06S03W04,
M06S03W09, M06S03W10, M06S03W15, M06S03W16, M07N09W36, M07N08W05,
M07N08W08, M07N08W19, M07N08W20, M07N08W28, M07N08W29,
M07N08W30, M07N08W31, M07N08W32, M07N08W33, M07N08W34,
M07N09W25, M07S01E25, M07S01E27, M07S01E28, M07S01E36, M07S02E03,
M07S02E10, M07S02E11, M07S02E13, M07S02E14, M07S02E19, M07S02E24,
M07S02E25, M07S02E28, M07S02E30, M07S02E31, M07S02E33, M07S03E19,
M07S03E20, M08S02E15, M08S02E16, M08S02E34, M08S02E36, M09S02E03,
M09S02E04, M09S02E09, M09S03E10, M09S03E11, M09S03E36, M09S04E15,
M09S04E16, M09S04E21, M09S04E22, M10S03E08, M10S03E09, M10S03E10,
M10S03E15, M10S03E16, M10S03E17, M10S03E22, M10S03E27, M10S03E28,
M10S03E34, M10S05E10, M11S04E07, M11S04E12, M11S04E18, M11S04E29,
M11S04E30.

San Francisco Garter Snake

EPA's authorization of any use of Acephate, Aluminum Phosphide, Azinphos-methyl, Bensulide, Beta-Cyfluthrin, Bifenthrin, Carbofuran, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Endosulfan, Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid, Magnesium phosphide, Methamidophos, Methidathion, Methomyl, Naled, Oxydemeton-methyl, Oxyfluorfen, PCNB Phenothrin, Permethrin, Potassium nitrate, Propargite, Resmethrin, Sodium nitrate, Strychnine, Tetramethrin, Tralomethrin, Trifluralin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 200 feet of the habitat described below if applied by ground; and
2. all areas within 400 feet of the habitat described below if applied by air,

Applicable Habitat. For the San Francisco garter snake, “habitat” means fresh-water (including natural or manmade (e.g., stock) ponds, slow-moving streams or pools within streams, vernal pools, and other ephemeral or permanent water bodies which typically support inundation during winter rains and hold water for a minimum of 12 weeks in a year of average rainfall, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in the following sections of California: M03S05W31, M04S05W03, M04S05W05, M04S05W06, M04S05W08, M04S05W09, M04S05W16, M05S04W07, M05S04W17, M05S04W18, M05S04W19, M05S04W20, M05S04W21, M05S04W28, M05S05W01, M05S05W12, M05S05W29, M08S05W04, M08S05W09, M08S05W16, M08S05W25, M08S05W26, M09S04W07, M09S04W08, M09S04W17, M09S04W18, M09S04W28.

California Freshwater Shrimp

EPA's authorization of any use of Acephate, Bensulide, Beta-cyfluthrin, Bifenthrin, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid, Methamidophos, Methidathion, Methomyl, Oxydemeton-methyl, Oxyfluorfen, PCNB, Phenothrin, Propargite, Resmethrin, Tetramethrin, Tralomethrin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 100 feet of the habitat described below if applied by ground; and
2. all areas within 400 feet of the habitat described below if applied by air,

Applicable Habitat. For the California freshwater shrimp, “habitat” means all perennial streams or intermittent streams with perennial pools, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in the following sections of California: M02N08W04, M02N08W05, M02N08W09, M02N08W10, M02N08W14, M02N08W15, M02N08W16, M02N08W23, M07N11W11, M03N08W19,

M03N08W29, M03N08W30, M03N08W31, M03N08W32, M03N09W35,
M03N09W36, M05N05W23, M05N05W24, M05N05W25, M05N05W26,
M05N06W02, M05N09W18, M05N09W19, M05N10W13, M05N10W24,
M06N06W05, M06N06W06, M06N06W07, M06N06W08, M06N06W16,
M06N06W17, M06N06W21, M06N06W27, M06N06W35, M06N09W04,
M06N09W05, M06N09W22, M06N09W23, M06N09W24, M06N10W12,
M06N10W13, M06N10W14, M06N10W17, M06N10W18, M06N10W19,
M06N10W20, M06N10W21, M06N10W22, M06N10W23, M06N10W24,
M06N10W25, M06N10W27, M06N10W28, M06N11W13, M06N11W14,
M06N11W23, M07N09W33, M07N10W13, M07N10W14, M07N10W24,
M07N11W02, M07N11W03, M07N06W32, M07N09W17, M07N09W19,
M07N09W20, M08N07W01, M08N07W06, M08N11W15, M08N11W22,
M08N11W27, M08N11W34, M09N07W25, M09N07W31, M09N07W36.

San Joaquin Kit Fox

EPA's authorization of any use of Acephate, Aldicarb, Aluminum phosphide, Azinphos-methyl, Brodifacoum, Bromadiolone, Carbofuran, Chlorophacinone, Chlorpyrifos, Diphacinone, Endosulfan, Magnesium phosphide, Naled, Phorate, Potassium nitrate, Sodium cyanide, Sodium nitrate, Strychnine, and Trufuralin is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 600 feet of the habitat described below if applied by ground or air,

Applicable Habitat. For the San Joaquin kit fox, “habitat” means all denning areas, defined as the 100 foot circular radius around the set of holes in the ground forming the surface of the den, as depicted in the Department of Pesticide Regulation Endangered Species Project, San Joaquin kit fox, denning characteristics, attached hereto as Attachment B, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in the following sections of California: M01N01E01, M01N01E02, M01N01E03,

M01N01E04, M01N01E05, M01N01E34, M01N01E35, M01S01E02, M01S01E03, M01S01W25, M01S01W36, M01S02E16, M01S02E17, M01S02E21, M01S03E03, M01S03E04, M01S03E09, M01S03E10, M01S03E15, M01S03E16, M01S03E19, M01S03E21, M01S03E22, M01S03E23, M01S03E31, M01S03E32, M01S03E33, M01S03E35, M01S03E36, M01S04E31, M02N01E28, M02N01E32, M02N01E33, M02N01E35, M02N01E36, M02S01W01, M02S03E02, M02S03E03, M02S03E04, M02S03E05, M02S03E07, M02S03E10, M02S03E11, M02S04E07, M02S04E32, M03S03E04, M03S03E05, M03S04E06, M04S01E07, M04S01E18, M10S06E21, M10S06E22, M10S06E27, M10S06E28.

Alameda Whipsnake

EPA's authorization of any use of 2,4-D, Acrolein, Aluminum phosphide, Brodifacoum, Bromadiolone, Bromethalin, Chlorophacinone, Difethialone, Diphacinone, Magnesium phosphide, Potassium nitrate, Sodium nitrate, Strychnine, Warfarin, and Zinc phosphide is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 100 feet of the habitat described below if applied by ground; and
2. all areas within 400 feet of the habitat described below if applied by air,

Applicable Habitat. For the Alameda whipsnake, "habitat" means all areas described as shrub communities known as chaparral consisting of northern coastal sage scrub and coastal sage, and in open grasslands, oak savanna, and oak-bay woodland occurring within 500 feet of such shrub communities, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in either (1) critical habitat designated for the Alameda whipsnake by the FWS (71 Fed. Reg. 58176), as depicted by the FWS at <http://crithab.fws.gov/>, or (2) in the following sections of California: M01N01E04, M01N01E08, M01N01E11, M01N01E12, M01N01E20, M01N01E21, M01N01E33, M01N02W17, M01N02W19, M01N02W20, M01N03W33, M01N04W36, M01S01E04, M01S01E05, M01S01E08, M01S01W17, M01S01W18, M01S01W30, M01S01W31,

M01S02E28, M01S02E29, M01S02E32, M01S02E33, M01S02E34, M01S02W02, M01S02W03, M01S02W10, M01S02W11, M01S02W12, M01S02W14, M02N01E33, M02S02W07, M02S02W17, M02S02W28, M03S01W11, M03S01W19, M03S01W20, M03S01W29, M03S01W30, M03S01W32, M03S02W12, M04S01W05, M05S04E04.

Valley Elderberry Longhorn Beetle

EPA's authorization of any use of Acephate, Aldicarb, Azinphos-methyl, Bensulide, Beta-cyfluthrin, Bifenthrin, Carbofuran, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Endosulfan, Esfenvalerate, Ethoprop, Fenpropathrin, Fluvalinate, Imidacloprid, Methamidophos, Methidathion, Methomyl, Naled, Oxydemeton-methyl, Oxyfluorfen, Permethrin, Phenothrin, Phorate, Propargite, Resmethrin, Tetramethrin, Tralomethrin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 100 feet of the habitat described below if applied by ground; and
2. all areas within 400 feet of the habitat described below if applied by air,

Applicable Habitat. For the Valley elderberry longhorn beetle, "habitat" means riparian habitat containing elderberry, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in the following sections of California: M08N01W28, M08N01W31, M08N01W32, M05N02W05, M05N02W08, M05N02W11, M05N02W12, M05N02W32, M06N02W19, M06N03W25, M06N03W36, M07N01E13, M07N01W06, M07N02E18, M07N02E19, M07N02W12, M08N02W25, M08N02W26, M08N02W27, M08N02W28, M08N02W29, M08N02W35, M08N02W36.

Bay Checkerspot Butterfly

EPA's authorization of any use of Acephate, Azinphos-methyl, Bensulide, Beta-cyfluthrin, Bifenthrin, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Endosulfan, Esfenvalerate, Ethoprop,

Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid, Methamidophos, Methidathion, Methomyl, Naled, Oxydemeton-methyl, Oxyfluorfen, PCNB, Pendimethalin, Permethrin, Phenothrin, Phorate Propargite, Resmethrin, Tetramethrin, Tralomethrin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and SET ASIDE in

1. all areas within 100 feet of the habitat described below if applied by ground; and

2. all areas within 400 feet of the habitat described below if applied by air,

Applicable Habitat. For the Bay checkerspot butterfly, “habitat” means all grasslands depicted in red on the detailed GIS maps included at Attachment C, but only to the extent that any such ecological features are found within the 8 counties specifically identified in the Complaint (and in this Stipulated Injunction) in either (1) critical habitat designated for the Bay checkerspot butterfly by the FWS (66 Fed. Reg. 21449), as depicted by the FWS at <http://crithab.fws.gov/>, or (2) in the following sections of California: M05S04W26, M05S04W27, M05S04W34, M07S01E25, M07S01E36, M07S02E29, M07S02E30, M07S02E31, M07S02E32, M08S01E36, M08S02E02, M08S02E03, M08S02E10, M08S02E11, M08S02E13, M08S02E14, M08S02E15, M08S02E22, M08S02E23, M08S02E24, M08S02E25, M08S02E26, M08S02E36, M08S03E19, M08S03E29, M08S03E30, M08S03E31, M08S03E32, M08S03E33, M09S01E01, M09S02E02, M09S02E03, M09S02E06, M09S02E10, M09S02E11, M09S03E03, M09S03E04, M09S03E05, M09S03E06, M09S03E08, M09S03E09, M09S03E10, M09S03E17, M09S03E18, M09S03E19, M09S03E20.

3. Terminating Events.

The interim injunctive relief set forth above in Section 3 will terminate automatically for a FIFRA authorization for a particular use of any of the Pesticides covered under Section 3 upon the completion of the consultation obligation imposed under section 7(a)(2) of the ESA and the implementing ESA consultation regulations. The EPA shall provide Plaintiff with notice of completion of Section 7(a)(2) consultation obligations made pursuant to this paragraph within

1 14 days of such determination, by facsimile or electronic mail, addressed to Plaintiff's Counsel
2 of Record in this matter.

3 **ACTIVITIES EXEMPTED FROM INTERIM INJUNCTIVE RELIEF**

4 **4. Particular Pesticide Programs Excluded.**

5 Notwithstanding Section 3, the Parties agree that the use of the Pesticides specified
6 below is NOT ENJOINED, VACATED, OR SET ASIDE:

- 7 a. **Public Health Vector Control Programs.** The use of the Pesticides covered
8 under Section 3 above for the purpose of public health vector control when such
9 program is administered by public entities.
- 10 b. **Invasive Species and Noxious Weed Programs.** Aquatic and non-aquatic uses
11 of the Pesticides covered under Section 3 above for control of state-designated
12 invasive species and noxious weeds when such program is administered by
13 public entities, so long as the following restrictions are implemented:
- 14 1. application of the Pesticides shall be limited to localized spot treatments
15 using hand held devices and may not occur within 20 feet of protected
16 habitat areas for the 11 species as set forth in Section 3 above;
 - 17 2. the Pesticides cannot be used when precipitation is occurring or is
18 forecast to occur within 24 hours;
 - 19 3. all spraying must be overseen by a certified applicator; and
 - 20 4. for 2, 4-D, only the amine formulation can be used.

21 **5. Endangered Species Act Approved Uses.**

22 Notwithstanding Section 3, the Parties agree that the use of the Pesticides covered under
23 Section 3 above is NOT ENJOINED, VACATED, OR SET ASIDE where such use is
24 permissible under one or more of the following:

- 25 a. a "no jeopardy" biological opinion issued under ESA section 7(a)(2) by the
26 United States Fish and Wildlife Service (the "Service") that addresses the use of
27 the Pesticide and effects on any one or more of the eleven species subject to this
28

1 Stipulated Injunction, provided that such use is consistent with any incidental
2 take statement included with the Service's opinion;

3 b. a "reasonable and prudent alternative" identified in a "jeopardy" biological
4 opinion issued under ESA Section 7(a)(2) by the Service that addresses the use of
5 the Pesticide and effects on any one or more of the eleven species subject to this
6 Stipulated Injunction provided that such use is consistent with the "reasonable
7 and prudent alternative" and any incidental take statement included with the
8 Service's opinion;

9 c. a written concurrence by the Service in a "not likely to adversely affect"
10 determination made under ESA Section 7(a)(2) that addresses the use of the
11 Pesticide and effects on any of the eleven species subject to this Stipulated
12 Injunction;

13 d. an incidental take permit issued by the Service under ESA Section 10(a) that
14 authorizes the take of any of the eleven species subject to this Stipulated
15 Injunction from application or use of the Pesticide;

16 **6. Specific Pesticide Product or Use Exceptions.**

17 Notwithstanding Section 3, the Parties agree that the following uses of the Pesticides
18 covered under Section 3 above are NOT ENJOINED, VACATED, OR SET ASIDE ;

19 a. use of the Pesticides in cattle ear tags;

20 b. indoor uses of the Pesticides;

21 c. tree injection applications of the Pesticides. However, the injection of the
22 pesticides acephate, aldicarb, azinphos-methyl, carbofuran, chlorpyrifos,
23 endosulfan, and phorate into Elderberry trees occurring within the sections of land
24 identified in Section 3 relative to the Valley elderberry longhorn beetle is not
25 permitted;

26 d. homeowner applications of the Pesticides to household potted plants;

27 e. use of the Pesticides in flea and tick collars for dogs and cats;
28

- f. use of the Pesticides for spot treatments of wasp and hornet nests, provided that such use occurs at least sixty feet from protected habitat areas for the 11 species identified in Section 3 above.
- g. individual tree removal using cut stump application of the Pesticides, provided that such use occurs at least sixty feet from protected habitat areas for the 11 species identified in Section 3 above;
- h. basal bark application of the Pesticides to individual plants, provided that such use occurs at least sixty feet from protected habitat areas for the 11 species identified in Section 3 above;

NOTIFICATION REQUIREMENTS

7. Brochure Content

EPA agrees to develop a bilingual (English & Spanish) brochure.

- a. The brochure shall 1) state that the Parties have reached a Stipulated Injunction setting forth a schedule for effect determinations and interim relief pending completion of consultation, if appropriate, with respect to EPA's registration of certain pesticides within certain areas of California, 2) list those 8 counties in the greater San Francisco Bay Area, including the Bay Delta, impacted by the agreed-upon relief in this Stipulated Injunction, and identify the affected species relative to each county,⁹ 3) provide tips for reducing off-site movement of pesticides, and 4) refer the reader to EPA's website for further information as noted below in section 10.

⁹ tidewater goby: San Mateo
delta smelt: Contra Costa, Solano
clapper rail: San Mateo, Contra Costa, Solano, Sonoma, Marin, Napa, Alameda, Santa Clara
salt marsh harvest mouse: San Mateo, Contra Costa, Solano, Sonoma, Marin, Napa, Alameda, Santa Clara
tiger salamander: Contra Costa, Solano, Sonoma, Alameda, Santa Clara
San Francisco garter snake: San Mateo
freshwater shrimp: Sonoma, Marin, Napa
San Joaquin kit fox: Contra Costa, Alameda
Alameda whipsnake: Contra Costa, Alameda
valley elderberry Longhorn beetle: Solano
Bay checkerspot butterfly: San Mateo, Alameda

b. The front cover of the brochure will incorporate the following heading and statement and shall be in a large font and highly visible.

WILDLIFE AND PESTICIDE HAZARDS

Some pesticide products may harm wildlife or their habitat.

8. Brochure Distribution

The EPA shall distribute a copy of this brochure to all commercial certified applicators of the Pesticides covered by Section 3 above that reasonably can be identified and located within the state of California; to all private certified applicators that reasonably can be identified and located as residing in the 8 California counties where EPA's authorization of use of the Pesticides covered under Section 3 are Enjoined, Vacated, and Set Aside by this Stipulated Injunction; to all registrants of the Pesticides covered by Section 3 above; and to the California Department of Pesticide Regulation, California Department of Fish and Game, and Pacific Region of the United States Fish and Wildlife Service. In addition, EPA shall distribute two-hundred and fifty (250) copies of this brochure to each of the County Agricultural Commissioner and Cooperative Extension Agent offices in the 8 California counties where EPA's authorization of use of the Pesticides covered under Section 3 are Enjoined, Vacated, and Set Aside by this Stipulated Injunction.

Finally, EPA shall mail the brochure described above to the pesticide user groups identified in Attachment D to this Stipulated Injunction entitled "Pesticide User Groups In The Bay Area." EPA shall provide annual notices to such user groups informing them that the Stipulated Injunction is still in effect and referring them to EPA's website for further information (including an electronic file of the brochure) until such time as EPA has completed the consultations for the Pesticides covered by Section 3 above, or has otherwise fulfilled its consultation obligations for such Pesticides relative to the 11 species at issue in this case.

9. Web-site Content

EPA shall display on its website the following:

1) The full text of the Stipulated Injunction, 2) maps identifying the areas in the 8 California counties identified in this Stipulated Injunction where the interim injunction

1 relief applies, and 3) fact sheets for the 11 species identified in Section 3 that shall
2 include, at a minimum, the biology, habitat needs, and status under the Endangered
3 Species Act for each such species.

4 The Parties agree that the maps provided by EPA on its website pursuant to this Section
5 may be relied on to determine where the interim injunctive relief applies under this Stipulated
6 Injunction.

7 **10. Point of Sale Notice Content**

8 EPA shall develop a point of sale notification for the Urban Pesticides in the form of a
9 shelf tag that incorporates the following written and graphic information:

10 a. The heading “Wildlife Hazard” in a large and visible font followed by the statement
11 that:

12 This product contains pesticides that may harm some wildlife species. Use of this
13 product in urban areas may pollute streams and downstream waters such as the Bay
14 and Delta.

15 Both the heading and the statement shall be highly visible to purchasers.

16 b. The notification shall also contain a prominent graphic.

17 **11. Point of Sale Distribution**

18 Within 120 days of the effective date of this Stipulated Injunction, EPA must contact the
19 retailers identified in Attachment E to this Stipulated Injunction entitled “Retailers Who Will Be
20 Provided Shelf Tags,” which shall be supplied by the plaintiffs, and inform them of the
21 Stipulated Injunction and request that they post the point of sale shelf tags described above
22 wherever they have for sale products containing the Urban Pesticides. EPA shall provide annual
23 notices to such retailers informing them that the Stipulated Injunction is still in effect and
24 referring them to EPA’s website for further information (including an electronic file of the point
25 of sale shelf tags) until such time as EPA has completed the consultations for the Urban
26 Pesticides, as defined in Section 2.b above, or has otherwise fulfilled its consultation obligations
27 for the Urban Pesticides.

28 **12. Notification of Stipulated Injunction.**

1 The EPA is directed to mail copies of this Stipulated Injunction directly to all registrants
2 of the Pesticides covered by Section 3. The EPA also is directed to display the terms of this
3 Stipulated Injunction on EPA's website.

4 **MODIFICATIONS TO INJUNCTIVE RELIEF**

5 **13. Modifications to INJUNCTIVE RELIEF.**

6 The parties reserve the right to seek to have this Court modify this Stipulated Injunction
7 because of EPA's and the Service's ongoing actions to comply with the ESA, to meet the
8 requirements of other federal agencies or departments, or to deal with circumstances not
9 presently anticipated. The Court will consider such future requests as it deems appropriate.

10 **DISPUTE RESOLUTION**

11 **14.** In the event of a disagreement between the Parties concerning the interpretation or
12 performance of any aspect of this Stipulated Injunction, the dissatisfied Party shall provide the
13 other Parties with written notice of the dispute and a request for negotiations. The Parties shall
14 confer in order to attempt to resolve the dispute within 14 days after receipt of the notice, or
15 such time thereafter as is mutually agreed upon. If the Parties are unable to resolve the dispute
16 within 21 days after receipt of the notice, or such time thereafter as is mutually agreed upon,
17 then any Party may petition the Court to resolve the dispute. The Court will consider such future
18 requests as it deems appropriate.

19 **ATTORNEYS' FEES**

20 **15.** Federal Defendants agree that Plaintiff is entitled to reimbursement of reasonable
21 attorneys' fees and costs, as provided in 16 U.S.C. § 1540(g). Federal Defendants and Plaintiff
22 agree to attempt to resolve Plaintiff's claim for fees and costs for all claims in this action
23 expeditiously, without the need for Court intervention. The Parties recognize that Defendants
24 have not waived any defense to and preserve their right to challenge the reasonableness of the
25 amount of attorneys' fees and costs requested by Plaintiff in the event that Plaintiff and Federal
26 Defendants are unable to resolve Plaintiff's claim for fees and costs. The Parties further
27 recognize that Plaintiff reserves the right to seek additional fees and costs incurred arising from
28

1 a need to enforce or defend against efforts to modify this Stipulated Injunction or for any other
2 unforeseen continuation of this action.

3 **16.** If the Federal Defendant and Plaintiff cannot agree on the amount of such fees within 60
4 days of the Court approving this Stipulated Injunction, Plaintiff shall file a motion for attorneys'
5 fees and costs with the Court in this matter. This 60 day period shall supersede the 14 day time
6 period otherwise applicable pursuant to Federal Rules of Civil Procedure Section 54(d)(2)(B)
7 and the court order approving the Stipulated Injunction will accordingly operate as an
8 enlargement of time pursuant to Federal Rule of Civil Procedure Section 6(b)(1) for Plaintiffs to
9 file a fee motion.

10 **SCOPE OF THE STIPULATED INJUNCTION**

11 **17.** No provision of this Stipulated Injunction shall be construed to require EPA to take, or to
12 preclude EPA from taking, any action under FIFRA to implement the use authorizations
13 contained herein. If Plaintiff believes the stipulated injunction has not been effective in
14 promoting pesticide user adherence to the use authorizations, Plaintiff may seek modification of
15 this stipulated injunction. EPA waives no defense it may have with respect to the terms of any
16 such requested modification.

17 **18.** No provision of this Stipulated Injunction shall be interpreted as or constitute a
18 commitment or requirement that the EPA take action in contravention of the ESA, the
19 Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or
20 procedural. Nothing in this Stipulated Injunction shall be construed to limit or modify the
21 discretion accorded to EPA by the ESA, the APA, or general principles of administrative law
22 with respect to the procedures to be followed in making the effects determinations described
23 above in Sections 1 and 2, or as to the substance of any such determinations.

24 **19.** Neither EPA's act of entering into this Stipulated Injunction, nor anything contained in
25 this Stipulated Injunction, shall be interpreted as an acknowledgement, endorsement, and/or
26 agreement by EPA as to the necessity and/or appropriateness of the buffers agreed to in
27 connection with the interim restrictions set forth in Section 3.
28

1 **20.** Nothing in this Stipulated Injunction shall bar EPA from acting on any matters covered
2 herein in a time frame earlier than required by this Stipulated Injunction, or from taking
3 additional actions not specified herein if EPA determines such actions are appropriate under
4 applicable law.

5 **21.** Defendants assert that no provision of this Stipulated Injunction shall be interpreted as,
6 or constitute, a commitment or requirement that EPA is obligated to spend funds in violation of
7 the Anti-Deficiency Act, 31 U.S.C. Section 1341, or any other provisions of law. In response,
8 Plaintiff asserts that this Stipulated Injunction does not create a conflict with the Anti-
9 Deficiency Act because the duty to make section 7(a)(2) consultations is required in non-
10 discretionary terms by the ESA and because the Anti-Deficiency Act would not excuse
11 compliance with a pre-existing court-approved Stipulated Injunction. Plaintiff intends to assert
12 this position if EPA fails to comply with the terms of this Stipulated Injunction for reasons of
13 insufficient appropriations. The EPA reserves all legal and equitable defenses to such a claim.

14 **22.** The Parties agree that this Stipulated Injunction was negotiated in good faith and that
15 entry of this Stipulated Injunction constitutes a settlement of claims that were vigorously
16 contested, denied, and disputed by the Parties. By entering into this Stipulated Injunction, the
17 Parties do not waive any claim or defense.

18 **23.** The undersigned representatives of each Party certify that they are fully authorized by
19 the Party (or Parties) they represent to agree to the terms and conditions of this Stipulated
20 Injunction and do hereby agree to the terms herein.

21 **24.** Upon entry of this Stipulated Injunction, Plaintiff's complaint shall be dismissed with
22 prejudice. The dismissal shall apply to and be binding upon the Parties hereto and anyone
23 acting on their behalf, including successors, employees, agents, elected and appointed officers,
24 and assigns. Plaintiff agrees not to bring, assist any other Party in bringing, or join EPA or any
25 other Party in any court proceeding that concerns an alleged violation of Section 7 of the ESA
26 pertaining to the effects of any of the Pesticides on any of the eleven species identified in
27 Section 3 in the nine Bay Area counties subject to this Stipulated Injunction until after the
28

1 completion of any Terminating Event for that pesticide as set forth in Section 4 of this
2 Stipulated Injunction.

3 **25.** This Stipulated Injunction does not constitute an admission or evidence of any fact,
4 wrongdoing, misconduct, or liability on the part of the United States, including without
5 limitation, EPA, its officers, or any other person affiliated with it, or any interpretation of any
6 applicable provision of law. This Stipulated Injunction has no precedential value and shall not
7 be used as evidence in any other court proceeding or in any other settlement discussions.

8 **26.** Plaintiff's sole judicial remedy to address the merits of any final action that may ensue
9 from EPA's performance of its obligations under this Stipulated Injunction is to file a separate
10 lawsuit challenging such final action. EPA reserves all defenses to any such suit. Nothing in this
11 Stipulated Injunction alters or affects the standards for review of final EPA action, or creates
12 jurisdiction that otherwise would not exist to review EPA action.

13 **27.** Notwithstanding the dismissal of this action, the Parties have agreed and requested that
14 this Court retain jurisdiction to oversee compliance with the terms of this Stipulated Injunction
15 and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of*
16 *America*, 511 U.S. 375 (1994).

17 **28.** The terms of this Stipulated Injunction constitute the entire agreement of the Parties, and
18 no statement, agreement or understanding, oral or written, which is not contained herein, shall be
19 recognized or enforced.

20 **29.** The terms of this Stipulated Injunction shall become effective upon entry of an order by
21 the Court ratifying this Stipulated Injunction

22
23 SO ORDERED this _____ day of _____, 2009.

24
25 _____
26 United States District Judge
27
28

Presented by:

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