



EARTHJUSTICE

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII  
INTERNATIONAL JUNEAU, ALASKA NEW YORK, NEW YORK OAKLAND, CALIFORNIA  
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

**Via Electronic Mail**

July 25, 2011

Attention: Michele Dias, Acting Chief Counsel  
California Department of Food and Agriculture  
1220 N Street, Suite 400  
Sacramento, CA 95814  
PEIR.info@cdfa.ca.gov

**Re: CDFAs June 23, 2011 Notice of Preparation of a Draft Programmatic Environmental Impact Report for a Statewide Plant Pest Prevention and Management Program**

Dear Ms. Dias:

On behalf of California Environmental Health Initiative, MOMS Advocating Sustainability, and Center for Environmental Health, I submit these comments on the California Department of Food and Agriculture's ("CDFA") June 23, 2011 Notice of Preparation of a Draft Environmental Impact Report for the Statewide Plant Pest Prevention and Management Program ("Pest PEIR"). These groups support sensible management of non-native species in California that protects public health and the environment.

The Statewide Program being considered by CDFAs appears to broadly consist of an undisclosed number of plant pest prevention and management programs and activities implemented by CDFAs throughout California. The actual environmental impacts of these activities are likely to be far-reaching and highly dependent on site-specific environmental variables, such as geography and climatic conditions. Given the apparent grand scale of CDFAs proposal, it is highly unlikely that CDFAs could predict or analyze all of the on-the-ground environmental impacts in the Pest PEIR.

Thus, to comply with CEQA, it is critical that CDFAs focus on developing a comprehensive *programmatic* EIR that addresses broad-scale policy issues across CDFAs Statewide Program. It must clearly define the proposed Statewide Program, evaluate alternative pest management approaches, including mitigation measures that could reduce or eliminate potential environmental effects, and comprehensively analyze environmental effects that are reasonably foreseeable at this time.

If, on the other hand, CDFAs intends to use the Pest PEIR to "cover" site-specific environmental impacts of future pest management projects, and thereby avoid future CEQA analysis—an objective we disagree with given the broad scope of the Statewide Program—CDFAs must clearly explain this in the Pest PEIR so that the public may fully understand the proposal and provide useful comments on it. Any other approach would plainly violate CEQA's public disclosure requirements.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Legislature adopted CEQA in 1970 concerned both with protecting environmental resources and with safe-guarding public health and safety. (See Pub. Resources Code, §§ 21000, 21001 [purposes of CEQA include “ensur[ing]” the “long-term protection of the environment” and “identify[ing] critical thresholds for the health and safety of the people of California”].) To that end, CEQA prohibits agencies from approving projects that may cause “significant” environmental effects if there are “feasible alternatives or feasible mitigation measures” that can avoid or “substantially lessen” those effects. (See Pub. Resources Code, § 21002; *Mountain Lion Foundation v. Fish & Game Comm’n* (1997) 16 Cal. 4<sup>th</sup> 106, 134.)

The primary means of achieving CEQA’s goals is the requirement that government agencies prepare an environmental impact report (referred to as an “EIR”) whenever a proposed project “may have a significant effect on the environment.” (Pub. Resources Code, § 21080(d).) In general, an EIR is an “informational document” that must inform public agency decision makers and the public generally of the proposed project and its significant environmental effects, including direct, indirect, and cumulative effects, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. (See CEQA Guidelines § 15121.)

CEQA provides for different kinds of EIRs depending on the type of project being carried out. The most common type of EIR is a project EIR, which examines the environmental impacts of a specific development project or action. (CEQA Guidelines, § 15161.) A “program” EIR may be prepared “on a series of actions that can be characterized as one large project” and are related either (1) geographically, (2) as logical parts in a chain of contemplated actions, (3) in connection with issuance of rules, regulations, plans, or other general criteria or govern the conduct of a continuing program, or (4) as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects. (CEQA Guidelines, § 15168(a).)

After an agency develops a program EIR, it may develop a “tiered” EIR for any projects which arise after the program EIR was prepared and certified. (Pub. Resources Code, § 21094(a).) “Tiering” refers to the “coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared.” (CEQA Guidelines, § 15385.)

When CEQA’s procedures are followed, EIRs ensure that government officials who approve projects “do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

## DISCUSSION

### **I. CDFA Must Clearly Inform the Public of the Full Scope and Extent of Pest Prevention and Management Activities That Will Be Assessed in the Pest PEIR.**

The purpose of CEQA is to inform the public of the environmental effects of a proposed project. To that end, EIRs must accurately describe the full scope of a proposed project. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193 [“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”].) Where, as here, an agency prepares a program-level EIR for numerous activities within its jurisdiction, it is imperative that the agency clearly inform the public whether the EIR will serve as a program- or project-level EIR. Otherwise, the public will not be fully informed of the extent of environmental impacts being assessed in the EIR.

Unfortunately, the June 23, 2011 Notice is confusing and vague as to the scope and extent of activities that will be analyzed in the Pest PEIR. Especially confusing is the extent to which CDFA plans to rely on the Pest PEIR to provide “CEQA coverage” for future site-specific pest prevention and management activities. (Notice at 3.) On the one hand, the Notice suggests that the Statewide Program anticipates a tiered framework for analyzing future site-specific projects, such that CDFA will prepare CEQA analyses for future site-specific projects. (Notice at 2.) On the other hand, the Notice makes clear that individual projects may be “covered” by the Statewide Program, and that if impacts are adequately addressed in the Pest PEIR, “no additional CEQA compliance would be necessary.” (*Ibid.*)

It is difficult to see how a programmatic EIR for the entire “range of plant pest prevention and management activities currently implemented by CDFA and its partners throughout the state” (Notice at 1) could accurately and comprehensively assess and disclose the site-specific impacts of pest management activities in all affected ecosystems and bioregions in California. However, if no further CEQA analyses will be completed for future projects, the Pest PEIR must inform the public of this fact and explain how specific activities will be implemented under the PEIR.

For example, CDFA must explain how the public will be informed of future proposed actions that are already “covered” by the Statewide Program Pest PEIR, and how and when their involvement and input will be allowed. What permits or approvals would be needed before site-specific actions can be taken? Is public involvement mandatory, or at the discretion of CDFA? Public and other stakeholder involvement is an important part of the CEQA process and is critical to environmentally considerate decision making. To the extent that the Pest PEIR will limit or eliminate public participation in site-specific pest prevention and management activities, or the public’s ability to challenge any such projects in court, the public should be informed and the consequences assessed in the Pest PEIR.

Additionally, if further CEQA analyses will not occur, the Pest PEIR must comprehensively analyze all of the environmental and public health impacts of the agency’s pest prevention and management activities, including all direct, indirect, and cumulative impacts, as well as alternatives that may reduce those impacts, *at the site-specific level*. Impacts that must be assessed and disclosed to the

public include impacts 1) to non-target insects, such as native moths and pollinators, 2) to vegetation and wildlife, especially threatened or endangered species, 3) to air and water quality (including an assessment of the potential for drift and runoff), and 4) to human health, especially vulnerable populations such as children, the elderly, and agricultural workers. The PEIR also must account for environmental variables, including geography, topography, climate, weather, and water and air quality.

## **II. Given the Broad Scope of the Statewide Program, CDFA Should Prepare a Programmatic EIR That Evaluates CDFA's Current Approach to Pest Management.**

Because it would be extremely difficult, if not impossible, for CDFA to adequately assess all of the site-specific environmental effects of all current and future activities falling within the Statewide Program in all affected areas in California, it is important that CDFA focus the Pest PEIR on evaluating true programmatic issues that are relevant to all of CDFA's pest management activities. In this way, CDFA may comply with CEQA, as it must, "as early as feasible in the planning process to enable environmental considerations to influence project program and design . . ." (CEQA Guidelines, § 15004(b).)

Foremost, the PEIR should analyze the agency's current "quarantine, eradication and control" approach to managing non-native species, and whether there are other alternatives to this approach that would reduce and/or eliminate potential effects on the environment and public health. Aspects of CDFA's current approach to managing non-native species that must be clearly defined and considered in the Pest PEIR include:

1. the scientific bases for CDFA's management assumptions, such as the assumption that non-native plant pests can be completely eradicated;
2. the costs associated with CDFA's eradication and control programs both to the state and to growers;
3. a rigorous evaluation of the effectiveness of current practices in terms of actual control or eradication of pests as well as impacts on the growers whose products and livelihoods pest management programs are intended to protect;
4. the criteria (if any) CDFA uses to determine if non-native plant pests are a serious environmental risk and should be eradicated;
5. CDFA's current practice of declaring "emergencies" for pest eradication projects instead of following CEQA's procedures for preparing EIRs prior to taking action, how CDFA determines if a pest infestation represents a true emergency under CEQA, Public Res. Code § 21060.3 [defining "emergency" as a "sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, property, or essential public services"], and an analysis of how the Statewide

Program and Pest PEIR will change this practice and/or address infestations that by definition are unexpected;

6. the impact of global warming on the movement of and rate of arrival and spread of pests in California, and the implications for the impacts and effectiveness of CDFA's current/proposed programs as well as alternatives to the proposed program.

In addition, CDFA must analyze, at the appropriate scale, the direct, indirect, and cumulative impacts to public health and the environment, including the resources identified in the preceding section. The PEIR must incorporate a complete health and environmental analysis that considers the full formulas, including "inert" or "other" ingredients, of any pesticides employed, as well as chronic and subchronic exposures to those pesticides. CDFA also should consider the most recent research on the impacts of pesticides on public health and the environment from institutions such as UCSF's Program on Reproductive Health and the Environment. Decisions regarding pest management must give primary consideration to impacts to human health and the environment.

### **III. The Pest PEIR Must Analyze Less Toxic Alternatives to the Proposed Program.**

CEQA requires that an EIR describe all reasonable alternatives to a proposed program, including those capable of reducing or eliminating adverse effects on public health and the environment. (Public Res. Code, §§ 21002, 21100.) The Notice states that the Pest PEIR will analyze the environmental impacts of "the management tactics authorized for use against a variety of plant pests." (Notice at 2.) It is important that CDFA structure the EIR so that it considers impacts of the proposed program of management activities and alternatives to that program, rather than addressing each potential management tactic as a separate program alternative.

Alternatives that should be considered in the Pest PEIR include:

1. An alternative based on true Integrated Pest Management (IPM), in which chemical control is an absolute last resort, least toxic chemicals are considered, and pest management is achieved by a variety of preventative practices, establishment of thresholds for pests, monitoring, and, if intervention is needed, with primary reliance on the manual and cultural approaches that organic and sustainable growers use;
2. An alternative that considers innovative methods of meeting national and international trade requirements other than chemical treatments, wide-area quarantines, and required treatment of growing areas. This alternative should explore diplomatic and other means for resolving concerns that establishment of non-native pest species in California could harm trade relationships with other states or countries, including removing or changing species' domestic legal classifications and establishing alternative forms of phytosanitary and grower-purchaser agreements that do not rely on chemical treatments on farms and in communities and other non-agricultural areas.

3. An alternative, or alternatives, that include(s) mitigation measures to protect 1) sensitive human populations, such as children, agricultural workers, and the elderly, 2) sensitive ecosystems and wildlife, including threatened and endangered species and aquatic habitats, 3) monitoring for impacts of program activities, and 4) independent scientific review of the risks posed by non-native pest species, and the health impacts of pesticides proposed for use in the programs.

Finally, in developing and considering program alternatives, CDFG should consider the most up-to-date scientific information. For example, entomologists at U.C. Davis are currently working to develop an Invasive Pest Policy that would be less dependent on widespread chemical intervention, more effective in preventing physical damage from pests and in satisfying economic and trade concerns, less burdensome to farmers, and more cost-effective than CDFG's current model. CDFG should carefully consider the work of these scientists, and any policy framework produced as part of the U.C. Davis process, to develop science-based alternatives to the Statewide Program.

### CONCLUSION

Thank you for the opportunity to provide comments on the scope of the Pest PEIR. Please contact me if you would like to discuss any of the issues raised in this letter.

Sincerely,



Erin M. Tobin  
Earthjustice

*Attorney for California Environmental Health Initiative,  
MOMS Advocating Sustainability, and  
Center for Environmental Health*