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FILED

MAY 17 2008

ALEX CALVO CLERK
~~ST. DEPUTY, SANTA CRUZ COUNTY~~

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22 SUPERIOR COURT OF CALIFORNIA
23 COUNTY OF SANTA CRUZ

24 COUNTY OF SANTA CRUZ and CITY OF
25 SANTA CRUZ

26 Plaintiffs/Petitioners,

27 v.

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

Defendants/Respondents.

Case No. 158516

**[PROPOSED] ORDER GRANTING
PETITION FOR WRIT OF
MANDATE; JUDGMENT**

Ruling Date: April 24, 2008
Dept: 4

Assignment For All Purposes:
Hon. Paul P. Burdick

1 ORDER

2 Having considered the issues framed by the operative pleadings in this action, reviewed the
3 administrative record and the briefs filed by the parties, and having entertained and considered oral
4 argument by counsel for the parties on April 24, 2008, the Court issues the following findings:

5 1) On October 3, 2007, respondent California Department of Food and Agriculture, under
6 the authority of respondent Secretary A.G. Kawamura (together, "Respondents") issued a Notice
7 of Exemption identifying a project ("the Project") consisting of aerial applications of a synthetic
8 insect pheromone to be applied throughout Capitola, Santa Cruz, Scotts Valley, and other areas of
9 Santa Cruz County to combat an infestation of the Light Brown Apple Moth ("LBAM"). The
10 Notice of Exemption asserted that the Project was exempt from the requirements of the California
11 Environmental Quality Act ("CEQA") on the grounds that it is an emergency project within the
12 ~~confines~~ ^{meaning} of Public Resources Code section 21080(b)(4) and that it is also subject to a categorical
13 exemption under California Code of Regulations, title 14, section 15308 ("the categorical
14 exemption");

15 2) At the hearing of this matter, Respondents conceded that the categorical exemption does
16 not apply to this case and the parties agreed that the only issue to be determined relevant to the
17 petition for writ of mandate in this case is whether the statutory emergency exemption applies to
18 the identified Project.

19 3) In order for the statutory emergency exemption to apply to the identified Project, the
20 administrative record must contain substantial evidence that the LBAM infestation is a sudden,
21 unexpected occurrence, involving a clear and imminent danger, demanding immediate action to
22 prevent or mitigate loss of, or damage to, life, property, or essential public services (*see* Public
23 Resources Code, § 21060.3; *Western Mun. Water Dist., etc. v. Sup. Court* (1986) 187 Cal.App.3rd
24 1104, 1113);

25 4) The administrative record in this case does not contain substantial evidence, as that term
26 is defined in California Code of Regulations, title 14, section 15384 and applicable case law, to
27 establish that the LBAM infestation is a sudden, unexpected occurrence, involving a clear and
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1 imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life,
2 property, or essential public services;

3 5) Respondents' issuance of the October 3, 2007, Notice of Exemption, and the underlying
4 determination that the Project comes within the confines of the statutory emergency and
5 categorical exemptions to CEQA, constitute a prejudicial abuse of discretion under Public
6 Resources Code section 21168.5.

7 IT IS THEREFORE ORDERED AND ADJUDGED THAT:

8 1) The petition for a peremptory writ of mandate of Petitioners County of Santa Cruz and
9 City of Santa Cruz is GRANTED;

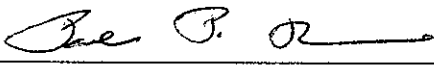
10 2) In accordance with Public Resources Code section 21168.9(a), a peremptory writ of
11 mandate will immediately issue ordering Respondents California Department of Food and
12 Agriculture and Secretary A.G. Kawamura to rescind the October 3, 2007, Notice of Exemption
13 and set aside their determination that the Project is exempt from CEQA under the statutory
14 emergency and categorical exemptions. A copy of the writ is attached hereto as Exhibit A.

15 3) In accordance with Public Resources Code section 21168.9(b), Respondents California
16 Department of Food and Agriculture and Secretary A.G. Kawamura are hereby ordered to refrain
17 from conducting aerial spraying of any pesticide or pheromone product in Santa Cruz County for
18 eradication of the light brown apple moth pursuant to an asserted CEQA exemption under Public
19 Resources Code section 21080(b)(4) or California Code of Regulations, title 14, section 15308,
20 until they certify the final Environmental Impact Report for the Eradication Project for the Light
21 Brown Apple Moth. Once the final EIR has been certified, this order will dissolve and the writ
22 attached hereto as Exhibit A will be discharged;

23 4) Nothing in this Order is to be construed as compelling Respondents to exercise their
24 lawful discretion in any particular manner.

25 IT IS SO ORDERED AND ADJUDGED.

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27 Dated: 5/12/09


28 Hon. Paul P. Burdick

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JUDGMENT

P.P.B.

Based on the Court's order of this date granting a petition for writ of mandate ~~in this~~ as set forth above, it is hereby ORDERED, ADJUDGED AND DECREED that judgment is issued in favor of Petitioners County of Santa Cruz and City of Santa Cruz P.P.B. ~~in this case~~ and against Respondents California Department of Food and Agriculture and A.G. Kawamura.

Petitioners County of Santa Cruz and City of Santa Cruz are the prevailing parties in this action and may recover their costs of suit from Respondents pursuant to the timely filing of a memorandum of costs and the Court's ruling on any timely motion(s) to strike or tax costs that may subsequently be filed in opposition by Respondents. As prevailing parties, Petitioners County of Santa Cruz and City of Santa Cruz may seek an award of attorneys' fees from Respondents pursuant to applicable statutes and rules of court and this Court shall retain jurisdiction over this matter for purposes of adjudicating any motions for attorneys' fees that are filed in this case.

IT IS SO ORDERED AND ADJUDGED.

Dated: 5/10/00

Paul P. Burdick
Hon. Paul P. Burdick

ORDER AND JUDGMENT APPROVED AS TO FORM:

William Jenkins

William Jenkins
Deputy Attorney General
Attorney for Respondents