

**Light Brown Apple Moth (LBAM)**

# **ECONOMIC IMPACTS AND SOLUTIONS**

**Clearing the Air  
in the  
CDFA, USDA Pesticide Spray Program  
On Nine Northern California Counties**



**C.A.S.S. RESEARCH SUMMARY  
Economics Action Team  
May 5, 2008**



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## **INTRODUCTION**

The purpose of this document is to provide a succinct collection of key facts, data and insights about the potential negative economic impacts of the LBAM pesticide spray program on affected communities, and to offer safe, just and effective alternative solutions.

Aerial spraying of an untested pheromone pesticide is currently targeted over residential communities with almost 7 million people in 9 counties throughout Northern California. The California Department of Food and Agriculture (CDFA) has initiated this program in response to a quarantine against the Light Brown Apple Moth. The communities include the counties of Alameda, Contra Costa, Marin, Monterey, San Francisco, San Mateo, Santa Clara, Santa Cruz and Solano. Monterey and Santa Cruz were already sprayed in September, October and November and are scheduled to be sprayed again starting August 17, 2008. The San Francisco Bay area is slated to be sprayed starting sometime after that.



People from all walks of life are contributing their time and expertise and numerous officials say they have never before experienced such vast and informed opposition. It is our hope that what follows here will be helpful for those who want to become better informed in order to take effective actions to halt the spray and to prevent this type of thing from happening again.

## **KEY DISCOVERIES**

In our collective quest to go upstream beyond the confusion and frustration to find reasonable, just and healthy solutions, we made several key discoveries. They include:

1) Negative economic impacts to the targeted communities could be vast, especially in the areas of tourism, real estate values and organic farming.



2) The CDFA has failed to address adverse health and environmental impacts, the die-off of seabirds, the effects of the chemical ingredients in the selected Checkmate pesticide, the safe and natural integrated pest management program successfully employed in New Zealand, the potential violations of US and California laws and international human rights norms, the impossibility of eradication and the potential economic impacts on individuals, businesses and schools in all nine targeted counties.

Fortunately, concerned scientists, businesspeople, journalists, parents, teachers and other citizens have researched and published vital information on the impacts ignored by the CDFA. (See endnote references, p. 39.)

3) The CDFA has hidden virtually all important information from the public and forced actions without transparency or independent public involvement. They have:

- imposed an unnecessary State of Emergency
- avoided a timely Environmental Impact Report
- concealed ingredients that, once revealed, turned out to be verifiably toxic
- used misleadingly old and irrelevant crop damage data from Australia
- exaggerated projections of damages to California agriculture
- given incomplete and inaccurate information in public presentations
- granted no bid and preferential contracts
- failed to prepare medical response teams, doctors or to offer a system for monitoring or attending to health complaints
- ignored skilled input from university scientists with viable solutions
- delayed providing official Public Access Requests for data

4) In the last 100 years there were over 30 documented cases of US Government agencies, including the USDA, EPA, Army, Navy, CIA, Department of Defense and others, intentionally testing harmful chemicals *covertly* on human populations – at least fourteen of which involved *aerial spraying*. (See Appendix E) This pattern has resulted in increasing distrust of these agencies, and appears similar to the current behavior of the CDFA and USDA pertaining to the LBAM in Northern California.

5) Many people, animals, birds and insects have already been harmed from the spray.<sup>1, 2</sup>

6) Our inalienable and constitutional rights to the protection of our safety, liberty, person and property are being violated by this spray. In violation of over 30 laws, regulations and international moral and ethical guidelines, the CDFA has ignored safe alternatives in favor of the aerial spray of toxic chemicals and synthetic pheromones on almost 7 million citizens in urban areas. (See Appendix C) On April 24, 2008 a judge in Santa Cruz County ruled to stop the spray until the Economic Impact Report was completed and passed. The questions raised by this report have been submitted to the USDA and CDFA and need to be addressed as part of their E.I.R. Other lawsuits are in process and more are being filed, including a Federal case by CASS.



7) The justification for the spray is based on flawed science and skewed, insufficient economics.

8) There is no crop damage due to the Light Brown Apple Moth.

9) LBAM is considered to be an insignificant pest in New Zealand<sup>3</sup>, <sup>4</sup>Australia, the UK and Hawaii.

10) Eradication of LBAM is most likely impossible and unnecessary.<sup>5</sup>

11) Farmers are experiencing economic damage due to US trade quarantine policy, not crop damage.

12) Narrow economic considerations are dictating policy at the expense of human rights and the health of our residents and the environment.

## **BACKGROUND – Follow the Money**

It is helpful to understand a few key concepts, core alliances and a bit of LBAM history to accurately assess the situation:

### **Quarantine**

Certain US Government protocols impact trade competition. One of these is quarantine. More than thirty years ago, the US instituted a quarantine on Australian citrus, nuts and other products because they were exposed to the Light Brown Apple Moth (LBAM). Canada and Mexico went along with the US embargo in order to maintain good trade relations with the US. As a result of restricting export of these Australian products, American growers had an advantage and prospered financially. The Light Brown Apple Moth, a native of Australia, was then discovered in Berkeley in July, 2006. Once it was found in California, the USDA quarantine then impacted US growers and farmers. In September of 2007, the Secretary of Agriculture declared a “State of Emergency.” The “State of Emergency” was based on a decades old classification of the insect and potential economic loss to growers resulting from the quarantine. There has been no crop damage from LBAM in California.

### **State of Emergency**

A State of Emergency is another protocol which impacts trade dynamics. In the case of LBAM, a State of Emergency was instituted by the head of the CDFR, a non-elected, governor - appointed bureaucrat, A. G. Kawamura. This Emergency status has significant ramifications. It allows the Government to by-pass an otherwise-required Environmental Impact Report, and to forego the usual process for public education and input. In addition, the State of Emergency enables the California Department of Food and Agriculture to access federal money through the Department of Homeland Security. President Bush’s current annual budget proposal contains \$330M in earmarks (cash allocated) for the control of three pests, with LBAM specifically mentioned.<sup>6</sup> Eighty percent of the Northern California spray program is funded through the USDA and its Director of the Emergency Management Office, Osama El Lissy. Many believe the State of Emergency was called to bypass the legal safeguard and access federal money.

## **Eradication**

Federal emergency funds are only available for eradication measures. USDA policies prevent federal emergency funding for pest management and control. CDFG has attempted 274 eradication efforts against 9 species of pests since 1982. None has been successful and both the programs and the pests are still in place. It's useful to note that no pheromone treatment has ever been used in a successful eradication of an entire species either. In addition, the California eradication program bypassed exclusive communities in Carmel, Monterey, Tehama and Seaside and a portion of Pebble Beach, including the Lodge and Golf Course, which in itself would undermine the strategy of eradication.

Of significant trade impact, however, is the fact that so long as an active attempt is made to eradicate the moth, then US crops are allowed to be exported whether or not the attempt is effective or successful. Eradication efforts are, in practice, long-term treatment plans that access federal funding. LBAM is currently managed effectively with natural measures in New Zealand, Australia and Hawaii. Among our proposed solutions is for the USDA to create new administrative rulemaking to provide "Urgency" funding for management of LBAM and other pests so that such funds are not just available for "emergency" or eradication programs.

## **Oil, Monoculture and the So-Called "Green Revolution"**

If we trace back the money roots of our current pesticide predicament, we find that agriculture took a critical turn in the mid 1900's when the so-called "Green Revolution" promised greater yields in a more cost effective manner with the use of Monoculture – the planting of a single crop over vast areas with no other plants interspersed. The initial results were encouraging, but then problems were revealed that plague us to this day. It turns out that this style of farming is less productive and more expensive than polyculture,<sup>7,8</sup> (where more than one species of plant is grown in the same area) and organic farming, when the costs of subsidies, chemicals, energy and related health costs are included in the accounting.

Monoculture upsets the balance of nature – specifically of insects, soil and plants. Certain insect populations and weeds get out of equilibrium, because without mixed planting there are insufficient natural predators and inhibitors. The espoused "solution" is to purchase and apply pesticides and herbicides. The use of these treatments has been shown to not only kill off even more of the balancing insects and plants, but also to poison the soil, food, water and people.

Genetically modified seeds ("Round-up Ready") were engineered which could survive the immersion in pesticides, then others which could not reproduce from one year to the next ("Terminator") and now new varieties ("Traitor") which will not grow the plant from one stage to the next without being triggered by the application of particular chemicals, for which the chemical companies own the patents.<sup>9</sup> Farmers have thus become dependent on petroleum-based pesticide products and corporate-manufactured seeds to survive. In the process agriculture has turned into agribusiness, and the natural process of sustaining and evolving life is being taken over for profit and control.

This major shift in agricultural practices was initiated when the Rockefeller Foundation's Natural Science Division combined with large agricultural companies like Cargill, ADM, Bunge and Continental Grain and multinational chemical companies like DuPont and Monsanto.<sup>10</sup> This combination of research and funding created a massive force and fueled the changeover of agriculture to a petroleum base and the consolidation of family farms into factory farms. In fact, 72% of agricultural production is now controlled by the wealthiest 8% of all U.S. farms.

The wealthiest and largest 10% of farms receive 73% of governmental farm subsidies, up 67% since 2000. The value of subsidies to the bottom 80% are down 16% in the same time period.<sup>11</sup> The primary beneficiaries of subsidies are the agribusiness companies who in 2004 spent \$53.8 million on campaign contributions.<sup>12</sup>

### **Windfall Profits**

The same family whose company, Paramount Farms covers 100,000 acres and is the largest US grower of citrus and nuts is also the owner of the pesticide Company, Suterra, which provides the chemical spray for LBAM. The owners are Stewart and Lynda Rae Resnick and their company was slated to be paid \$15 Million (88%) of the initial \$17 Million contract for spraying the first two counties. If the proposed multi-year contract goes into effect, it would provide an "emergency" based windfall profit of hundreds of millions of dollars to the Resnicks. Despite being long time Democrats, they were among the top contributors to Arnold Schwarzenegger's election campaign, giving \$144,600, as well as contributing to all members of the State Agriculture Committee. Governor Schwarzenegger was the one who OK'd the State of Emergency. The contract was awarded to Suterra in spite of the fact that theirs was reportedly the most costly bid. The Resnicks and their parent company, Roll International, benefit from the quarantine, the taxpayer-funded spray and the chemical sales. Roll is the same company which, in a closed door deal in 1994 (which excluded public interest groups, environmentalists and smaller water contractors), was able to purchase controlling interest in the largest aquifer in California, the Kern Water Bank, an underground lake that had been purchased and developed with \$74 million of taxpayer dollars. The original intent was for the aquifer to act as a safeguard against drought for citizens and farmers of California.<sup>13</sup>

### **Faulty Crop Damage Projections**

Rather than access recent hard economic data, the CDFA uses figures from 1993-1994 in Australia, when growers were using the old organophosphate pesticides, to estimate that California crop damages due to LBAM might reach \$133M annually. As we looked more closely into these calculations, however, we discovered that only 11% of total production costs for LBAM was attributable to actual crop damage, and the rest was for research and treatment. If we use this 11% figure, the actual estimated crop damage from LBAM in California, *if there were to be any*, could be \$14 million instead of \$133 million. Since New Zealand and Australia stopped using organophosphate pesticides in the 1990's, LBAM has not caused any significant damage to crops. The CDFA has since raised the damage estimate to \$640 million, but with no apparent explanation. (See Appendix B)

## **POTENTIAL ECONOMIC COSTS TO COMMUNITIES**

In other recent documents, scientists and citizen researchers have reported thoroughly on the health and environmental damages of this spray program.<sup>14, 15</sup> With the CDFG public relations focus on projected losses to farmers, the potential negative impacts on the revenue of other major businesses in the affected communities have been almost completely ignored by both the Government and the populations themselves. These looming losses are only now beginning to become a part of the community awareness and media reporting. Projected drops in revenues to our communities if the spraying resumes could easily dwarf losses due to crop damage, *should any actually occur*.

California is the most visited state in America, earning over \$88 billion in travel-related income per year. There are already reports of tourists opting to stay away from the Monterey and San Francisco Bay areas if the spray is resumed. Tourism is San Francisco's number one revenue generating industry, with visitor spending reaching \$7.37 billion in 2005. Now there have been discussions on a premier travel web site cautioning against travel plans to Northern California.<sup>16</sup> Local residents would be going out less and if aversion to being involuntarily sprayed with pesticides decreased the tourism (including entertainment and hospitality) industry even 1%, the lost revenues would be deeply felt. These figures, as well as an accompanying calculation at 10%, are outlined in this document. (The dot.com bust and September 11 attacks dropped the tourist revenues by 16.3% in 2002.<sup>17</sup>



Our most conservative estimates project **annual losses of \$198 million (1%) to \$1.98 billion (10%) for the tourist industry of the nine counties** for which aerial spraying is planned. (See Appendix A)

Some home buyers are hesitating to purchase in the nine county spray zone and real estate agents are beginning to realize the challenge of selling homes that will be immersed in toxins for years on end if CDFG proceeds with their plan. Agents will need to disclose this new hazard or risk liability suits. The Marin Association of Realtors has already voted to oppose the planned spraying and to amend disclosure advisory forms to notify homebuyers of potential spraying.<sup>18</sup> **Real estate commissions at the same rates of loss could drop between \$17.8 -178 million dollars.**

**A 1% -10% drop in housing prices would translate into a \$25.7 – 257 billion drop in the value of housing assets.** (See Appendix A) Not only are houses the primary repository of most people's equity, but if people choose to leave the sprayed counties, their houses could be difficult to sell.



Monterey and Santa Cruz counties are frequently referred to as the epicenter of organic farming in the US. Even though the USDA has technically allowed organic growers to continue to qualify their food as organic even after it's exposed to the pheromone-pesticide spray, discerning shoppers are not buying it - the logic or the food. Buyers are asking for labeling of sprayed produce at the markets. The result is a projected loss of revenue for organic farmers. The California Certified Organic Farmers (CCOF) officially reversed their initial support of the spray and has joined efforts to implement a safe alternative. **Organic farming could lose \$2.8 M million to \$28.8 million annually in just these two counties**, if the spray resumes. (Appendix A) The discovery of E-Coli in California Spinach from the Monterey area quickly dropped the revenues for the spinach growers from \$258.3M by \$74M, a loss of 28%).<sup>19</sup>

### **Estimated total annual losses in revenue for all 9 counties**

for the combined areas of:

- 1) Tourism and related construction and tax revenue
- 2) Losses to Organic farming
- 3) Losses in Real Estate Commissions

total: **\$200M (estimated at a 1% reduction due to spray) or \$2 Billion in losses (at 10%)**

(See Appendix A)

### **Taxpayer Costs - Paying to Spray Ourselves**

These figures do not include the hundreds of millions of taxpayer dollars that are intended to be used for funding the spray (\$100-500M+), the CDFCA's public relations efforts and the legal fees to fight the vast socio-political and legal backlash that is emerging among the nearly 7 million people targeted for immersion in the pheromone pesticide spray. If the moth is not eradicated, the next five years of the 10-year license could run the cost to taxpayers close to a billion dollars. Remember, no such program, out of 274, has ever successfully eradicated a species.<sup>20</sup>

### **Compensation Costs**

Not included here are the economic losses are the costs associated with evacuating, housing and caring for the chemically sensitive, disabled, pregnant, elderly and infant residents as well as those who rationally choose to leave to avoid the risk of serious damage to their health.

### **Miscellaneous Costs**

As we begin to imagine the predicament of large urban areas continually immersed in toxins, other potential areas of lost revenue arise. A few examples: lost workdays/productivity as people get sick, outside workers who might skip their shifts on the nights sprayed, resulting in lost

productivity (police, firemen, night-time construction crews, transit workers, etc), outdoor weddings, sporting events, emergency room visits from sick residents without insurance, lost revenue to schools due to increased absenteeism. (In a sampling of six high schools in Santa Cruz County after the spray, average absences in the three days following the spray were more than double the average of the three prior months.<sup>21</sup>) The Berkeley Unified School District Board of Directors has recently passed a resolution opposing the LBAM aerial spray program.

### **Citizens Taking a Stand for No Spray**

Citizens have persuaded political representatives to file numerous legislative bills and city resolutions against the spray. Already 19 cities and two counties, representing over 1.8 million people, have formed a coalition with resolutions against the spray. Over 20,000 citizens have already signed petitions to stop the spray. All this despite the CDFG awarding a no-bid contract for close to one half million taxpayer dollars (from the USDA) to a high-powered PR firm, Porter Novelli, to convince the public that this spray is safe and necessary. (After the Associated Press exposed Schwarzenegger's ties to Porter Novelli, the CDFG began the process of suspending the contract after already spending close to \$100,000.<sup>22</sup>)

### **CASS Law Suit**

In November 2007, a team of lawyers with CASS came together to develop a strategy to ensure not only that this eradication program would be permanently stopped, but to set a precedent for the future so that no one in California would have to be exposed to this kind of governmental over-reaching and abuse of power.

The lawsuit that CASS has structured tackles areas of law that are unique to all the other suits. If successful, it will prevent this program from continuing, and benefit not only people in Santa Cruz or Monterey, but throughout all of California. The case is being filed against USDA, EPA, CDFG and APHIS.

## **SOLUTIONS**

With so much confusion, suffering and conflict around this issue, it can seem as if there is no positive resolution. On deeper inspection, however, there are simple, effective, sustainable, just and inexpensive resolutions to the issues at hand. We can keep people safe, support healthy food growing and farmer's revenue and restore our unalienable and constitutional rights. After six months of investigation and extensive consultation with growers, doctors, scientists, business people, legislators, lawyers and many others, here is what we propose:

- 1) **Re-classify the LBAM as an established, non-eradicable species.** This lifts the so-called "State of Emergency."
- 2) **Lift the quarantines both here and abroad.** The re-classification allows the USDA to make this change. Mexico, Canada, New Zealand and Australia have been primarily led by US trade policy in this matter, and have expressed a willingness to lift theirs if the US initiates it.
- 3) **Stop the aerial and ground spraying.**
- 4) **Implement safe alternatives, IF control is necessary.** Manage moth populations, if there becomes a proven imbalance, with the same best integrated pest management methods recommended by scientific experts and proven effective in New Zealand.<sup>23</sup>
- 5) **Subsidize the transition,** with some of the funds originally intended for spraying, for farmers implementing integrated pest management and ecologically sound planting practices.
- 6) **Eliminate CDFA's requirements for toxic organophosphate controls for LBAM in nurseries.**
- 7) **Require CDFA to recalculate potential agricultural impact of LBAM** in California using recent New Zealand data (taken after the use of organophosphates was discontinued).
- 8) **Require CDFA to calculate, disclose and discuss with the public both short and long term potential economic impacts on all affected parties** of any pest management treatment in order to come to wise, healthy and inclusive decisions.
- 9) **Require CDFA or Homeland Security to monitor borders carefully for LBAM.**
- 10) **Enforce government protection** of the already-existing local, state and federal laws as well as international ethical guidelines intended to protect our rights, health, safety, privacy and economic well-being.
- 11) **Create an Office of Environmental and Democracy Law Enforcement.** Establish this in the Attorney General's Office with equitable citizen and environmental expertise represented.
- 12) **Adopt the Precautionary Principle as a guiding law of the land -**  
"that the burden of proof falls on those who would take an action that carries risks to health and the environment."<sup>24</sup>
- 13) **Push for passage of bills into law which:**
  - align all relevant policies with the Precautionary Principle
  - uphold our fundamental constitutional rights.
- 14) **Begin the Initiative process,** if necessary, to ban all application of pesticides on non-agricultural land without full and informed consent of residents and local governments.
- 15) **Begin recall petitions, if necessary,** for all political representatives who do not uphold laws intended to protect the health and safety of citizens and the environment as represented in the US and CA constitutions and the CA codes.
- 16) **Use the media** and all other necessary methods to inform fellow residents of this violation and the need to stop it.

- 17) **Communicate relentlessly with representatives and bureaucrats** who are responsible for or can do something about stopping the spray.
- 18) **File and win all possible and necessary law suits** - City, County, Federal, International.
- 19) **Create coalitions of city governments and Boards of Supervisors** who have passed resolutions against the spray. (Nineteen cities and two counties have already joined the Coalition of California Cities to Stop the Spray as of April 30, 2008)
- 20) **Create new city ordinances to supersede corporate rights**, (already done in other cities.)<sup>25</sup>
- 21) **Create new administrative rulemaking to provide “Urgency” funding for control, suppression, management and monitoring of LBAM and other pests** so that such funds are not just available for “Emergency” or eradication programs.

(See Appendix F for Notes on Solutions)

Until the spray is stopped, some personal actions which you can take are:

- 1) **Keep expanding the electronic and phone network** of concerned citizens to organize future response teams and alliances as needed.
- 2) **Join the CASS Email list** to receive weekly notices of important events and information at <http://cassonline.org>
- 3) **Participate with a CASS Action Team** in your area. <http://www.cassonline.org/teams.html>
- 4) **Make tax-deductible donations** to support the CASS law suit and other activities.  
CASS: California Alliance to Stop the Spray, 200 Washington St, Suite 107, Santa Cruz, CA 95060 (please make checks payable to CASS and include your return address for a tax deductible receipt)  
Or use Paypal at <https://www.paypal.com/cgi-bin/webscr>
- 5) **Get informed** at and send friends to: <http://www.lbamspray.com>
- 6) **Watch and share the science of LBAM Video** at:  
[http://www.youtube.com/watch?v=2Zc7I\\_o0M6E](http://www.youtube.com/watch?v=2Zc7I_o0M6E)
- 7) Sign the petition to stop the spraying at <http://www.lbamspray.com>
- 8) Circulate this and other papers from <http://cassonline.org/> and <http://www.lbamspray.com>

This report was a joint effort of the CASS Economics Action Team:  
Foster Gamble, Jerilyn Bock, Janis Knepp, Dennis Knepp and Glen Chase

**The MISSION of the California Alliance to Stop the Spray (CASS) is to** provide an organizational vehicle by which residents of the state protect their inalienable rights to safety and privacy, and to not have their persons or property, including public areas, sprayed with chemicals or any other substance.

CASS is a transpartisan organization committed to operating with fairness, integrity, and inclusiveness.

CASS works to reveal the full truth of the spraying and to inform and include all affected people to the greatest extent possible, so that the most healthy, equitable and wise solutions are achieved.

Working toward sustainable and ecologically sound solutions, CASS embraces the spirit of the “Precautionary Principle” - that if an action or policy might cause severe or irreversible harm to the public, in the absence of a scientific consensus that harm would not ensue, the burden of proof falls on those who would advocate taking the action.

## APPENDIX A CALCULATIONS OF ECONOMIC IMPACTS

### ESTIMATED POTENTIAL LOSSES TO 9 COUNTIES DUE TO LBAM

<http://www.visitcalifornia.com/media/uploads/files/FastFacts-06FINAL21.pdf>

**(California Fast Facts, California Travel and Tourism Commission)**

California is the most visited state in America. Tourism is San Francisco's #1 revenue producer. California earns \$88.1 billion in travel-related income each year (this is a 2005 stat).

This spending directly supported 911,800 jobs x 22% (total travel \$ percentage of 9 CA counties) = 200,596 jobs in **9 counties x 10% = 20,059 jobs**

*Actual 2004 figures for Total Travel Spending by targeted county:*

County	Travel Spending	Population
Alameda	\$2,470.3M	1,443,741
Contra Costa	1,071.7	948,816
Marin	596.6	247,289
Monterey	1,896.0	401,762
San Francisco	8,677.5	776,733
San Mateo	2,136.9	707,161
Santa Clara	3,201.6	1,682,585
Santa Cruz	573.1	255,602
Solano	506.8	394,542
	17,918.9	6,858,231

**10% loss on total Tourist Revenue of \$17,918.9M = \$1.791.89 M = \$1.8 Billion**

(9 Spray counties)

**1% loss = \$180 M (9 counties)**

Examples of potential lost revenue for individual counties:

San Francisco (2005)

At 7.37B x 10% = \$737 M

1% = \$73.7M

10% loss of 66,315 jobs in SF which are related to tourism would equal 6,632.

1% = 632 jobs lost

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/05/13/BUG0TIR3FC37.DTL>

Marin @ \$596.6M x 10% = 59.7M

1% = \$5.97M

Monterey \$1.89B x 10% = 189.6M

1% = \$18.9M

Santa Cruz 573.1M x 10% = 57.3M

1% = \$5.7M

**Monterey + Santa Cruz = 246.9M in losses**

**1% = \$24.7M**

**New travel and hospitality industry construction** was \$1.4 B in 2005.  
 10% of this, if lost due to spray would be **\$140M**. 1% would be **\$14M**

California earns \$9.9 billion in **TAX REVENUE** directly from tourism-related spending.  
 \$1.9B in **local taxes** (x 10% = \$190M x 22% = **41.8M**) (SC @ .5% of State tourist revenue = 9.5M x 10% = \$950,000),  
 and \$3.4B in **state taxes** (x 10% = 340M x 22% = **74.8M**) (SC @ .5% of State tourist revenue = \$17M x 10% = 1.7M  
 And 4.6B (x 10% = \$60M x 22% = **\$101.2M** (SC @ .5% = \$23M x 10% = \$2.3M) in **Federal taxes**.

Each county in California earns approximately \$1.3 billion (average) in travel expenditures by visitors each year.  
 Using an average 4% increase per year would extrapolate for 2007 to \$95B for California for an average of \$1.63B per county or, for the 9 sprayed counties, \$14.67B. An estimated 10% of this amount, if lost as revenue would be \$1.47B annually. This would probably be more like \$2B because of the disproportionate popularity for tourists of counties like Santa Cruz, San Francisco, Monterey and Santa Clara.

**Santa Cruz County 2007**

Organic Farming –

(2700 acres, 70 registered farms, Organic is 15% of Total Farming Revenue of \$414,267,000 = \$62,140,050)

\$6,214,005 (10% loss)  
 \$621,400 (1% loss)

[http://www.agdept.com/content/cropreport\\_06.pdf](http://www.agdept.com/content/cropreport_06.pdf)

Santa Cruz Agricultural Commission 2007 Crop Report

**Monterey County 2006**

(17,357 acres, 111 farms)

Total Organic Farming revenue = \$226,465,742 (increase of 8.5% over 2005)

\$22,646,574 (10% loss)  
 \$2,264,657 (1% loss)

<http://www.co.monterey.ca.us/ag/pdfs/cropreport2006.pdf>

Monterey Agricultural Commission 2006 Crop Report

+ 4,559 jobs (.5% of 911,800)

Nine Counties 10% of totals

Tourist Rev	\$1,800,000,000
Tourist Const.	140,000,000
Local Tax loss	<u>41,800,000</u>
	\$1,981,800,000
State Tax	74,800,000

Fed Tax loss	<u>\$101,200,000</u>	
	\$2,157,800,000	Annual loss from decline in tourist industry at 10%
	\$215,780,000	Annual loss from decline in tourist industry at 1%

+ 20,059 jobs

**POTENTIAL LOSSES IN REAL ESTATE VALUES DUE TO LBAM SPRAYING**

With a population of 255,602 in Santa Cruz, and estimating 3 persons per home, there would be 84,200 homes and

The **median** price was \$600,000 (599,000 in 2007) x 84,200 = 50,520,000 x 10% =

\$5,052,000,000. (**\$5.05 Billion loss in real estate value in Santa Cruz County** alone)

The **average** price for homes sold in 2007 was \$918,000 x 84,200 = \$77,348,561,180 x 10% =

\$7,734,856,118 (**\$7.7 Billion loss in real estate value in Santa Cruz County** alone)

Santa Cruz is by population 3% of the 9 counties scheduled for spraying. Many of these are far wealthier than SC so a direct extrapolation is probably conservative and gives us a potential loss in real estate value due to SBAM spraying alone in all nine counties of

(.03X = 5.05B so X =) **\$168.33Billion** loss in real estate value in all nine sprayed counties.

**POTENTIAL LOSSES TOTALS**

		LBAM		
SANTA CRUZ COUNTY		ALL NINE COUNTIES		
10%	1%	10%	1%	
Tourist, Construction & Tax				ANNUAL
\$64.5M	6.45M*	\$2B	200M*	
Real Estate				
(\$5.05 B if Mean				
home price	(505M)	(\$168.33 B)	(16.8B)	
or \$7.07 if Average				
home price	707M*	257B	25.7B*	
\$7.1B	713.5M	259B	25.9B	

**POTENTIAL LOSSES IN REAL ESTATE COMMISSIONS  
DUE TO LBAM SPRAYING**

Santa Cruz County

Sales in 2007 = \$1.07B x 5% (commission) = \$53,500,000 x 10% = \$5.35M

X 1% = \$535,000

Santa Cruz is by population .03% of the total of all nine targeted counties

Extrapolating to **all nine counties**, lost commissions could be

.03 X = \$5,350,000

X = **\$178,000,000 at 10%**

Or **\$17.8 M at 1%**

## APPENDIX B

### FAULTY ECONOMICS IN USDA/C DFA CALCULATIONS OF POTENTIAL CROP LOSSES TO CALIFORNIA AGRICULTURE

Most of the justification for possible alleged economic losses due to the light brown apple moth (LBAM) in California cited by the USDA and CDFA, was from outdated Australian statistics for the years 1993-1994. This data was taken from one report titled “Pests and Pest Management Impact on Climate Change – A Report for Rural Industries Research and Development Corp.” by Dr. Robert Sutherst, Entomologist, report date 2/2000.

The following State and Federal agencies used the same identical information from the Sutherst report for the years 93/94 in all of these reports regarding LBAM eradication program as the basis and justification for possible economic damage to California crops:

- 1) CDFA- document titled, “Finding of Emergency” March 21, 2007.
- 2) CDFA – document titled, “Dept. of Food and Agriculture Proposed Changes in Regulations. March 21, 2007.
- 3) LBAM Act Senate Bill #556 – Effective 9/7/07.
- 4) USDA-APHIS-PPQ-FERAL – “Economic Analysis: Risk to US Apple, Grape, Orange and Pear Production from Light Brown Apple Moth” 11/07.
- 5) CDFA “Proclamation of an Eradication Project against the Light Brown Apple Moth” dated 9/28/07.

Sutherst used statistics from the Australian Bureau of Statistics for two years – 1993/94 - to project likely impacts of climate change on two pests – LBAM and Queensland fruit fly. This report stated that the growers of apples, oranges, pears and grapes spent a total of \$17,310,000 on LBAM but this was mostly for research and control. Only about 11% (\$1,973,000) of the total costs of production was attributable to actual crop damage caused by LBAM. These statistics were absent from all of the USDA/C DFA reports.

Relevant to this discussion, but obviously missing from all of the five US reports listed above, was Sutherst’s conclusion that the government of Australia had very modest expenditures on LBAM and the majority of expenditures were for research.

Almost the exact identical statement below (taken from the Sutherst report), was found in the five CDFA, USDA and LBAM Act documents above:

“It was estimated for Australia that LBAM causes AU\$21.1 million annually (*which is actually 12.4M in American dollars*) in lost production and control costs, or about 1.3% of gross fruit value for apples, pears, oranges and grapes when compared with 1993/1994 gross fruit value of \$1.633 billion.” This exact statement was used in USDA/C DFA reports except for the last line – “when compared with 1993/1994 gross fruit value of \$1.633 billion.” Why was this line excluded with reference to the years 1993/1994?

Based on the Australian economic data from the Sutherst report for the years 1993/1994, the government documents listed on page 1 concluded the following:

“Applying this percentage to 2005 gross value of these same crops in CA of \$5.4 billion (USDA 2006), the estimated annual production costs would be \$70.2 million. Additional costs for other fruit crops would add additional costs of \$63.1 million based on their 2005 gross value of \$4.8 billion. Therefore total lost production and control costs could be \$133 million for all crops.” Words like could, would, imply pure speculation.

*However, if we use the same Sutherst figures which showed only 11% of total production costs for LBAM was attributable to actual crop damage, the actual estimated damage from LBAM in California could be \$14 million instead of \$133 million. And this is based on the assumption that we would have the same total expenditures for LBAM in California that were found in Australia for the reported years 1993-1994. This was a huge assumption to make based on inadequate, inconclusive Australian data, when they were extensively using organophosphate pesticides which tend to wipe out beneficial predators and induce pest imbalance. (Even if we used the \$160M - \$640 million figures that El Lissy (USDA) and Kawamura (CDFA) began using later, calculating 11% of that would still have crop damages at \$17.6 - 70.4M, because the remainder, according to their own out-dated data, would have been research and treatment.)*

In an Environmental Assessment report of September 2007, Osama El-Lissy, the Director of the U.S. Dept of Agriculture Emergency Management Office, gives some very large values for the potential cost of crop damage from the light brown apple moth. In the third paragraph on page 9 of his report he makes the claim of \$640M for the cost of crop damage and control costs in the eleven costal counties affected so far by the LBAM. He goes on to claim a California cost of up to \$2.4 billion annually if the LBAM spreads throughout the State.

These costs are inaccurate. First compare the cost to the total value of all California agricultural exports. In that same paragraph, El-Lissy states that the total value of California agricultural commodities shipped around the world in 2003 was \$7.2 billion. The amount of \$2.4B is one-third of the total value of all California agricultural products. The percentage of the LBAM cost relative to the total value of the agricultural products is inaccurate.

The Australian report by Dr. Robert Sutherst entitled "Pests and Pest Management, Impact of Climate Change" states that the cost of LBAM control, quarantine, and research is only 1.3 percent of the gross fruit value (page 17). The Sutherst report should be well known by Mr. El-Lissy and his staff. Using the value of 1.3 percent gives a cost of \$93M for all costs to the state of California for LBAM control, not \$2.4 billion. This works out to less than \$3 dollars each for the 36 million people living in California.

USDA/CDFa are planning on spending approximately \$100M – 500+M just on spraying – which won't eradicate the moth, and the moth has done no damage.

## APPENDIX C

### A LISTING OF LEGAL AND MORAL VIOLATIONS

by USDA and CDFA in actions taken to eradicate LBAM:

1) United States Constitution

“...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property**, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article XIV

2) California State Constitution – The very document that creates the state of California, Guarantees safety for its residents:

**“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”**

Article 1 DECLARATION OF RIGHTS - Section 1

3) **“The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”**

CA Constitution, Article, 1, Section 3(b)(1)

4) California Code requires **consent before spray**:

**“No person shall directly discharge onto a property without consent of the owner or operator of the property.”**

California Code, Division 6, Chapter 3, subchapter 2, Section 6616

5) California Code requires **protection of persons, animals and property**

b) Notwithstanding that substantial drift would be prevented, **no pesticide application shall be made or continued when:**

**1. There is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process;**

**2. There is a reasonable possibility of damage to nontarget crops, animals or other public or private property; or**

**3. There is a reasonable possibility of contamination of nontarget public or private property, including the creation of a health hazard, preventing normal use of that property.**

California Code, Division 6, Chapter 3, subchapter 2, Section 6614

6) CEQA – California Environmental Quality Act

**Protection of the environment consistent with the provision of a decent home and suitable living environment for every Californian shall be the guiding criterion in public decisions.**

CA. Public Resources Code, Div 13, Environment.

This section states that it is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man. It further states that **governmental agencies at all levels are required to consider qualitative factors, as well as economic and technical factors, and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.**

7) Further, Title 14, California Code of Regulations, Chapter 3. Guidelines for Implementation of the California Environmental Quality Act, Article 18. Statutory Exemptions, Section 15269. Emergency Projects.

“The following emergency projects are exempt from the requirements of CEQA: Specific actions necessary to prevent or mitigate an emergency. **This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.**”

An emergency is defined 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. **“Emergency” includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage**”

The Legislature had a chance to exempt CDFA from CEQA and purposefully chose not to do so. The legislature desired full CEQA review of projects undertaken to eradicate LBAM.

8) **Thematic Strategy on the Sustainable Use of Pesticides Expert Meeting on Aerial Spraying Minutes of the Meeting, March 31, 2004, European Commission\***, wherein the Commission states that, due to inherent high risk (in particular from spray drift), **aerial spraying should be banned**...and would require member states to severely restrict or ban aerial spraying when the conditions for safeguarding bystanders or the environment cannot be fulfilled [**and this statement was made in consideration of aerially spraying crops, not human populations**]

The *Precautionary Principle* is the guiding hand in the European Union’s response to pesticides and genetically modified foods and animals, and is a reason U.S. agricultural products are rejected in these countries. The European Union Commission Communication notes “The Precautionary Principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health, may be inconsistent with the high level of protection chosen by the EU.”

9) **CDFA has not yet obtained clearance to begin spraying from the US Fish and Wildlife Service as it relates to the impact of spraying on endangered species.**

APHIS has designated CDFA to find out if endangered species would be affected, also to see if minority populations and EO 13045, Protection of children from environmental risks is violated. NOT A THIRD PARTY, INDEPENDENT, UNBIASED AGENCY, APHIS and CDFA and EPA and USDA are all committed to this assault on citizens to further limit competition of interstate and foreign commerce, all components defined as violations under the RICO Act.

10) **CDFAs actions act as a nuisance and a trespass** (County of Santa Cruz vs CDFAs Superior Ct. of California. County of Santa Cruz Case No. 158516, Oct. 31, 2007) Officials would uphold laws to forcefully blunt citizen nuisance and trespass on their homes and their properties. There would be no equal application of enforcement.

11) **CDFAs has yet to provide the public with evidence of a permit from the Monterey Bay Marine Sanctuary.** Undersecretary Gomes states that “The Department will not apply pesticides to water bodies, riparian habitat areas or areas lacking host insects.

12) **CDFAs refuses to answer questions from citizen interest groups and legislators in compliance with CPRA and FOIA in a timely and complete manner, if at all.**

13) Section 18 of the **Federal Insecticide, Fungicide, and Rodenticide ACT (FIFRA)**, EPA regulation 40 CFR Part 166 (ref. 10) **has not approved pheromone products for chronic or repeated use or for aerial spraying or in any preparation, micronized or aerially delivered, even in times of true emergencies...**

14) **The Americans with Disabilities Act protects people with chemical sensitivities and other disabilities from discrimination.**

From: <http://www.healthcentral.com/asthma/index-3259-149.htm> The Americans with Disabilities Act (ADA) is a civil rights law that gives you the right to ask for changes where policies, practices or conditions exclude or disadvantage you. As of January 26, 1992, public entities and public accommodations must ensure that individuals with disabilities have full access to and equal enjoyment of all facilities, programs, goods and services. The ADA borrows from Section 504 of the Rehabilitation Act of 1973. Section 504 Prohibits discrimination on the basis of disability in employment and education in agencies, programs and services that receive federal money. The ADA extends many of the rights and duties of Section 504 to public accommodations such as restaurants, hotels, theaters, stores, doctors' offices, museums, private schools and child care programs. They must be readily accessible to and usable by individuals with disabilities. No one can be excluded or denied services just because he/she is disabled or based on ignorance, attitudes or stereotypes.

**Does the ADA Apply to People with Asthma and Allergies?**

Yes. In both the ADA and Section 504, a person with a disability is described as someone who has a physical or mental impairment that substantially limits one or more major life activities, or is regarded as having such impairments. Breathing, eating, working and going to school are "major life activities." **Asthma and allergies are still considered disabilities under the ADA, even if symptoms are controlled by medication.**

... Under Section 504, public schools and programs cannot avoid their responsibility by claiming to have limited funds or resources. Nor can they impose a "disparate impact" on people with disabilities. The ADA requires public accommodations to make changes, except in cases where an "undue burden" would result.

This program violates the intent of the **Light Brown Apple Moth Act (2)(C)** which states, **“Eradication activities undertaken pursuant to this article shall comply with all applicable laws and regulations and shall be conducted in an environmentally responsible manner.”**

If the CDFA had been operating in an “environmentally responsible manner,” they would have allowed the necessary environmental impact reports to supersede their aerial pesticide spraying program. Instead, the State used its powers to push through a totally unproven, unsubstantiated false “emergency” in order to intentionally evade all environmental impact reports and spray residential areas with an untested pesticide that made hundreds of people sick. Damage to the environment, like the deaths of hundreds of birds from a “mystery oil” spill, and the worst “red tide” in the history of California, which made many surfers sick, were also the result of this careless act by the State.

**Secretary Kawamura of the CDFA appears to have a different definition of an “emergency” from that of a reasonable person when referring to a tiny light brown apple moth. Kawamura declared,** “This emergency (LBAM) clearly poses such an immediate, serious harm that *delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest.* This emergency action is to avoid serious harm to the public peace, health, safety or general welfare.”\*

There definitely IS an emergency. But it’s the one created by the CDFA and Kawamura, supported by the USDA, APHIS and Governor Schwarzenegger, perpetrated against the people without their consent, endangering our health and safety, and without protection of the communities and environment being aerially assaulted with pesticides.

### **International Environmental and Human Rights Advisory Report**

[http://www.lbamspray.com/00\\_Documents/2008/EHRA.pdf](http://www.lbamspray.com/00_Documents/2008/EHRA.pdf)

Some of the international human rights norms and documents that apply in the assault on privacy, health and human rights by the USDA and the CDFA.

Daniel Taillant, Director of the Human rights and the Environment wrote:

“Most of our basic human rights are affected by environmental degradation. The *right to health* is affected by environmental abuse, such as water, air, and noise contamination. The *right to property* is often violated by commercial exploitation... The *value of our property* is also affected by environmental pollution. The *right to equality* is greatly affected by the unequal burden shared by certain sectors of society who are the targets of environmental contamination... everything and anything that influences the environment directly influences our human condition, and *a violation of the environment is a violation of our human rights.*”

#### **15) Right to life, liberty and security of person.**

**“Everyone has the right to liberty and security of person.”**

UDHR - Universal Declaration of Human Rights

<http://www.un.org/Overview/rights.html>

CCPR – International Covenant on Civil and Political Rights

[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

#### **16) Right to privacy and home**

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...”

UDHR Article 12

CCPR Article 17

(This entails the right to be secure in your home, to be able to enjoy the use of your property and to not have one's property devalued as a result of state actions.

**17) Right to property**

UDHR Article 17

“No one shall be arbitrarily deprived of his property.”

**Duty to protect the child** (i.e. persons under age 18)

**“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, [or] maltreatment...”**

CRC Article 19 - Conventions on the Rights of the Child (1990)

<http://www.unhchr.ch/html/menu3/b/k2crc.htm>

**“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.”**

CESCR – International Covenant on Economic, Social and Cultural Rights

[http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm)

**Right of the child to the highest standard of health**

**“State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health.”**

CRC Article 24

**18) Duty to encourage school attendance**

**“States Parties shall take measures to encourage regular attendance at schools.”**

CRC Article 28, 1 (e)

(Average attendance in six monitored Santa Cruz County High Schools all more than doubled their absences in the three days immediately following the November aerial spray.\*)

**19) Right to compensation**

In 1985 the UN General Assembly spelled out the nature of indemnification in the Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power.

[http://www.unhchr.ch/html/menu3/b/h\\_comp49.htm](http://www.unhchr.ch/html/menu3/b/h_comp49.htm)

This declaration insists that **“victims are entitled to prompt regress for the harm that they have suffered” and that offenders should “pay fair restitution to victims, their families and dependents.”**

**20) Right to know**

**21) Right to participation in decision-making in environmental issues**

The Rio Declaration on Environment and Development\* establishes citizens' right to information about environmental toxics to which they may be exposed and to participate in the decision making process.

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>

**“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous material and activities in their communities, and the opportunity to participate in decision-making processes.”**

Rio Declaration on environment and Development - Principle 10

**22) Right to equal protection of the law**

**“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”**

CCPR Article 26

**23) In August 2005, Congress enacted a moratorium on EPA use of human pesticide experimentation until strict ethical standards were established. The intent of this moratorium was to protect pregnant women and infants from any sort of testing.** “Such rules shall not permit the use of pregnant women, infants or children as subjects; shall be consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing and the principles of the Nuremberg Code with respect to human experimentation...EPA will neither conduct nor support any intentional dosing studies that involve pregnant or nursing women or children for all substances EPA regulates.” **The Federal “Common Rule” created requirements for the protection of human subjects from experiments done by the EPA and the USDA.** <http://www.hhs.gov/ohrp/policy/common.html>  
<http://www.ens-newswire.com/ens/jan2006/2006-01-25-05.asp>.

**24) FEDERAL AVIATION ADMINISTRATION - Planes are restricted to flying above 1000ft when over urban populations.\*** The CDEA itself admits that the planes from Dynamic Aviation have been flying as low as 500ft.

**25) There are legal precedents in the Malathion case** that should further help protect us from such a violation. The first successful lawsuit involving property damages resulting from the aerial spraying of malathion as part of the 1997 Medfly Eradication Program was settled in the Tenth Judicial Circuit court in Polk County, Florida, in May 2000. (230 people reported getting sick)

In April 2007, a federal judge signed a settlement agreement in which New York City admits that the pesticides it sprayed may indeed be dangerous to human health as well as to natural environment. Mayor Rudolf Giuliani and other City officials had claimed that the spraying was safe. Damages were paid to five grassroots environmental and wildlife rehabilitation groups. The plaintiffs in the lawsuit were the No Spray Coalition, Beyond Pesticides, Disabled in Action and Save Organic Standards.

**26) A 1991 Supreme Court decision (Wisconsin Public Intervenor c. Mortier 90-1905) ruled that the Federal law regulating the manufacture, sale and use for pesticides permitted local governments to impose more stringent regulations of their own.**

**27) The CDFA's aerial pesticide spraying program over heavily populated residential neighborhoods also violates the intention of two Executive Orders:**

**1. EO 12898\*: Federal Actions to Address Environmental Justice in Minority Populations and low-income populations. The order was to prevent minority, low-income communities from being subjected to disproportionately high or adverse human health or environmental effects.**

The CDFA appears to have been selective in the areas they sprayed, by excluding communities where mostly wealthy people live. In Monterey County, most of Carmel, all of Carmel Valley, the exclusive gated enclaves of Monterra and Tehama and a portion of Pebble Beach, including the Lodge and Golf Course, were not sprayed. In Santa Cruz County, most of Rio Del Mar, Seascape, most of the UCSC campus, and ocean front properties were not sprayed. Clearly, there is a pattern documented on the CDFA's own aerial spraying maps of not spraying some wealthy communities.

Were the rich communities with political clout intentionally not screened for moths so that these communities would not be sprayed? No traps equals no moths caught which equals no spraying. While information on placement of traps is public record, and has been posted on other county's websites, like Sonoma County, our County Agricultural Commissioners refuse to tell us where the traps were placed. If this was not intentionally done to protect the wealthy communities, why won't the CDFA release trap placement information to the public?

By withholding public information about all other details of the aerial pesticide spraying program, like proof of an economic emergency and placement of moth traps, the CDFA has also violated the following State Constitutional right:

**28) The second Executive Order violated by the CDFA is the following:**

**2. EO 13045\*: Protection of Children from Environmental Health Risks and Safety Risks: This Federal Order states that children may suffer disproportionately from health and safety risks. This EO requires each Federal Agency (USDA, APHIS, EPA, etc) to identify, assess and address environmental health and safety risks that may disproportionately affect children.**

Where are those government assessments of health and safety risks to children?

The USDA's conclusion regarding this EO was that, since aerial spraying will be conducted overnight when children are inside, and since "pheromones" (no mention of the total Checkmate pesticide product) minimizes the risks to children, no other assessments were needed. It's again obvious that these federal agencies also violated the provisions of this Executive Order.

## **DEFICIENCIES IN THE FEDERAL REGULATION OF CHEMICALS**

The Toxic Substances Control act of 1976 (TSCA)

[http://en.wikipedia.org/wiki/Toxic\\_Substances\\_Control\\_Act](http://en.wikipedia.org/wiki/Toxic_Substances_Control_Act)

is the only law that is intended to enable regulation of chemicals both before and after they enter commerce. And studies concluded that TSCA has not served to assess the hazards of chemicals or control those of great concern. TSCA DOES NOT REQUIRE chemical producers to disclose information on the health and environmental safety of these chemicals or on the approximately

2,000 new chemicals that enter the market each year. TSCA places legal and procedural burdens on the EPA. Since 1979 the EPA has used its authority to restrict only five chemical or chemical classes, though the agency reported in 1994 that about 16,000 chemicals in the U.S. were of some concern on account of their structure and volume in commerce.

**EPA requires very little testing for the potential hazards of the combination of active and inert ingredients, even though humans and the environment are actually exposed to a chemical cocktail when a pesticide is used.** Of the over 2300 substances EPA has identified as “inerts” in pesticide products, EPA classifies more than 1700 as “unknown toxicity” because EPA’s Office of Pesticide programs does not have adequate information about their hazards. USAEPA 1998 List of inert pesticide ingredients [www.epa.gov/opprd001/inerts](http://www.epa.gov/opprd001/inerts)

The scale of chemical product is immense and will continue to expand globally. Many chemicals that are useful to society are also hazardous to human biology and ecological processes. The EPA found just under 700 such chemicals in the blood of a nationwide survey of Americans in 1987. Animal studies indicate that these chemicals can disrupt the development of organ systems of fetuses and infants at very low doses.

In 2006 the European Parliament passed the REACH law, or Registration, Evaluation, Authorization, and Restriction of Chemicals. REACH requires a toxicity assessment of all those chemicals that are already on the market that have never been tested and plugs the loophole left open by TSCA. REACH also requires all chemicals manufactured or imported into the EU will have to be registered with the ECHA, European Chemicals Agency in Helsinki. U.S. citizens will have access to these databases and get a first-ever look at the potential health effects of some toxins. Will the US become a dumping ground for hazardous chemicals if it’s cheaper for manufacturers to keep making the more toxic version of a product for use here in the U.S.?

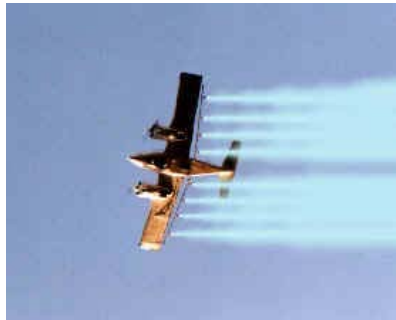
Just recently, Deborah Rice, an employee of the Maine Department of Health and Human Services was dismissed by the EPA from a toxicology review panel that was reviewing the safety of diphenyl ether (PBDE) also known as “deca.” Rice was previously a recipient from the EPA of an award for “exceptionally high-quality research.” The agency was pressured to remove her from the panel, which she had been selected to chair, by a lobbying group, the American Chemical Council. Apparently the group did not like her concerns about the toxicity of the chemical and the costs to the electronics industry if it were to be banned. The scary implication of this and other similar cases is that the EPA’s first allegiance is to industry profits rather than to citizens’ health and that any expert who dares to say that toxic chemicals should be banned is removed from advisory panels. <http://www.naturalnews.com/z022773.html>

In 2006, six groups including the Pesticide Action Network and Physicians for Social Responsibility sued the EPA in the Second Circuit Court of appeals in New York City and the Ninth Circuit Court of Appeals in San Francisco for creating **a new rule allowing pesticide companies to use intentional tests on humans to justify weaker restrictions on pesticides.** They contended that the agency’s human testing rule violates a law passed by Congress in 2005 mandating strict ethical and scientific protections for pesticide testing on humans. <http://newstandardnews.net/content/index.cfm/items/2864>

## APPENDIX D

### PENALTIES FOR MEDICAL EXPERIMENTATION WITHOUT INFORMED CONSENT

California code (as well as the internationally signed and recognized Nuremberg Code) declares it is illegal to conduct medical experiments on people without their informed consent. The Environmental Protection Agency has acknowledged that the particulates in CheckMate chemicals are small enough to penetrate the body and have not been tested on humans, which means that the LBAM spray “program” qualifies as a medical experiment. Violations incur significant fines. Each person violated counts as a separate offense.



If penalties were enforced for conducting medical experiments on 1% of the population in all nine targeted counties, the penalties would be

\$680M (at 1%) per perpetrator  
or, at 10%, they would total approximately \$6.8B

These penalties also carry jail time for those responsible, including representatives of pharmaceutical companies. These numbers quickly mount into the thousands of years.

#### REFERENCES AND CALCULATIONS

##### **Right of experimental subjects to free and informed consent**

**“The voluntary consent of the human subject is absolutely essential.”**

Nuremberg Code item 1

**“The human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.”**

Nuremberg Code item 9

The Nuremberg Code (1940) International Principles for Human Experimentation (From Council Law No. 10, Nuremberg., Oct. 1946-April 1949, Wash. D.C.: USGPO. For Full Code:

<http://ohsr.od.nih.gov/guidelines/nuremberg.html>

(The *Nuremberg Code of Ethics* in Medical Research and the *Declaration of Helsinki* have not been encoded into law and are therefore non-enforceable)

The aerial application of pesticides is not just a pesticide experiment, but under State and Federal Laws, a medical experiment.

Aerial applications fall under the legal definition of a human experiment under the California Health and Safety Code, section 24170-24179.5, and also falls under the legal definition of a drug. The CH&S Code defines **a medical experiment to include a biological substance or organism that can penetrate or damage human tissues. Checkmate formulations and Bt, Bacillus thuringiensis, a bacterium, are biological substances or organisms.** **The Federal Food Drug and Cosmetic Act (Section 201(g)(1). Aerial application of the pheromone pesticide chemical compound mixture constitutes human pesticide and medical experimentation.**

### **PROTECTION OF HUMAN SUBJECTS IN MEDICAL EXPERIMENTS ACT**

State of California, USA, Chapter 1.3 Human Experimentation

The subject shall:

- Be given an explanation of the procedures to be followed in the medical experiment, and any drug or device to be utilized.
  - Be given a description of any attendant discomforts and risks reasonably to be expected from the experiment.
  - Be given a disclosure of any appropriate *alternative procedures, drugs or devices* that might be advantageous to the subject, and their relative risks and benefits.
  - Be given an *opportunity to ask questions* concerning the experiment or procedures involved.
  - Be instructed that *consent to participate in the medical experiment can be withdrawn at any time...*
  - Be given a copy of the signed and dated written consent form...
  - Be given the *opportunity to decide to consent or not to consent* to a medical experiment without the intervention of any element of force, fraud, deceit, duress, coercion, or undue influence on the subject's decision.
- "Informed consent"** means the authorization given pursuant to Section 24175 to have a medical experiment performed after each of the following conditions have been satisfied:...
- "Medical experiment"** means:
- a. The severance of, *penetration or damaging of tissues* of a human subject or the use of a drug or device, as defined in Section 109920 or 109925, electromagnetic radiation, heat or cold, or a biological substance or organism in or upon a human subject in the practice or research of medicine in a manner not reasonably related to maintaining or improving the health of the subject or otherwise directly benefiting the subject.
  - b. The investigational use of a drug or device....
24176. Violations; damages; misdemeanor; waiver of rights
- a. Any person who is primarily responsible for conduct of a medical experiment and who negligently *allows* such experiment to be conducted without a subject's informed consent, as provided in this chapter, shall be liable to such subject in an amount not to exceed one thousand (\$1,000) as determined by the court.
  - b. *"willfully fails to obtain* the subject' informed consent" = \$5,000
  - c. *"willfully fails to obtain... and thereby exposes a subject to a know substantial risk of serious injury, either bodily harm or psychological harm"* = \$10,000



## APPENDIX E

### HISTORY OF COVERT TESTING OF CHEMICALS ON HUMANS



The CDFA and USDA are asking us to just trust their unsubstantiated claim that the chemicals they intend to immerse us in from airplanes for years are safe. They say the Environmental Protection Agency (EPA) assures that the ingredients are safe. Is that wise to trust them to regulate what is in our air for the next 3-19 years? Should we be suspicious of untold dangers in addition to the violation of our rights to privacy and safety?

In the last 100 years there were over 30 documented cases of US Government agencies, including the USDA, EPA, Army, Navy, CIA, Department of Defense and others, intentionally testing harmful chemicals *covertly* on human populations – at least fourteen of which involved *aerial spraying*. At least three were over the San Francisco Bay Area.

Particularly relevant is the case in 1994, when U.S. military aircraft began dropping a gel substance on the tiny town of Oakville, California, near the Pacific coast. Everybody in town came down with flu and pneumonia-like symptoms. Some people were hospitalized and remained ill for months. Pets and barnyard animals died. The gel material was tested by a number of labs which found human blood cells and nasty bacteria, including a modified version of *pseudomonas fluorescens*, cited in over 160 military papers as an experimental biowarfare bacteria.

In addition to the Medfly/Malathion spray program, which caused many illnesses and for which the State was successfully sued in a class-action suit, the USDA claimed with certainty that its chemical DDT would not contaminate the wildlife and marine ecosystems. The USDA now admits it does.

The USDA said the fertilizer nitrates used on large farms would increase crop yields, and they would never reach groundwater aquifers. Today the USDA admits that nitrates have seeped into and blighted potable water supplies in dangerous concentrations.<sup>26</sup>

When Stewart Resnick was confronted by CASS volunteers about the danger of aerial spraying of Checkmate, he responded, “Talk to the EPA. They have assured us it is safe”

#### **Environmental Protection Agency**

A sampling of recent EPA actions:

2008: Environmental and farm worker advocates have sued the Bush administration, challenging the EPA's decision to reauthorize four previously banned pesticides on fruit and vegetable fields in California. An EPA spokesperson said "Our mission is to protect the environment and human health." An EPA lawyer said the agency found the four substances ***posed risks to human health but concluded that their cost savings to growers outweighed the dangers.***

2008: EPA forced to cancel Children's Environmental Exposure Research Study (CHEERS) to pay poor families to test fluorinated pesticides on infants, but it will continue with funding from the American Chemistry Council

2008: The EPA dismissed an award winning neurotoxin specialist from a toxicology review panel (which she had been chosen to chair), in compliance with a request from the industry lobby group the American Chemical Council. Debra Rice had indicated that two PBDEs which had been banned after their rate of accumulation in human tissue had been linked to rising cancer rates. The ACC sought to set new maximums for safe exposure.

<http://www.naturalnews.com/z022773.html>

2008: EPA prohibits California from setting tougher vehicle emission standards

<http://www.commondreams.org/archive/2008/04/05/8111/print/>

Some other examples:

#### LISTS AND REFERENCES

##### Covert Chemical and Biological Experiments on People

[http://www.chemtrails911.com/docs/human\\_experiments.html](http://www.chemtrails911.com/docs/human_experiments.html)

1915: A doctor in Mississippi produced Pellagra in twelve white Mississippi inmates in an attempt to discover a cure for the disease.

1931: Dr. Cornelius Rhoads, under the auspices of the Rockefeller Institute for Medical Investigations, infects human subjects with cancer cells. He later goes on to establish the U.S. Army Biological Warfare facilities in Maryland, Utah, and Panama, and is named to the U.S. Atomic Energy Commission. While there, he begins a series of radiation exposure experiments on American soldiers and civilian hospital patients.

1940's: The U.S. government injected 12 human guinea pigs with uranium and plutonium without their knowledge as part of a Cold War-era radiation experiment. The 12 victims were injected during the 1940s -- 11 with plutonium, and one with uranium -- to see how the human body would react to an atomic bombing. The tests sprang from efforts to develop atomic weapons. At the time, scientists claimed that the people were terminally ill anyway and would not survive 10 years. But a number of them lived longer, and the plutonium is said to have caused urinary tract infections and painful osteoporosis, or thinning of the bones.

1940's: In an exceptionally large study at Vanderbilt University in the 1940s, approximately 820 poor, pregnant Caucasian women were administered tracer doses of radioactive iron. Vanderbilt worked with the Tennessee State Department of Health, and the research was partly funded by the Public Health Service.

1940: Four hundred prisoners in Chicago are infected with Malaria in order to study the effects of new and experimental drugs to combat the disease. Nazi doctors later on trial at Nuremberg cite this American study to defend their own actions during the Holocaust.

1942: Chemical Warfare Services begins mustard gas experiments on approximately 4,000 servicemen. The experiments continue until 1945 and made use of Seventh Day Adventists who chose to become human guinea pigs rather than serve on active duty.

1944: U.S. Navy uses human subjects to test gas masks and clothing. Individuals were locked in a gas chamber and exposed to mustard gas and lewisite.

1945: The Manhattan Project Program F is implemented by the U.S. Atomic Energy Commission (AEC). This is the most extensive U.S. study of the health effects of fluoride, which was the key chemical component in atomic bomb production. One of the most toxic chemicals known to man, fluoride, it is found, causes marked adverse effects to the central nervous system but much of the information is squelched in the name of national security because of fear that lawsuits would undermine full-scale production of atomic bombs.

1946: Patients in VA hospitals are used as guinea pigs for medical experiments. In order to allay suspicions, the order is given to change the word experiments to investigations or observations whenever reporting a medical study performed in one of the nation's veteran's hospitals.

1947: Colonel E.E. Kirkpatrick of the U.S. Atomic Energy Commission issues a secret document (Document 07075001, January 8, 1947) stating that the agency will begin administering intravenous doses of radioactive substances to human subjects.

1947: The CIA begins its study of LSD as a potential weapon for use by American intelligence. Human subjects (both civilian and military) are used with and without their knowledge.

1950: Department of Defense begins plans to detonate nuclear weapons in desert areas and monitor downwind residents for medical problems and mortality rates.

1950: In an experiment to determine how susceptible an American city would be to biological attack, the U.S. Navy sprays a cloud of bacteria from ships *over San Francisco*. Monitoring devices are situated throughout the city in order to test the extent of infection. Many residents become ill with pneumonia-like symptoms.

1951: Department of Defense begins open air tests using disease-producing bacteria and viruses. Tests last through 1969 and there is concern that people in the surrounding areas have been exposed.

1953: U.S. military releases clouds of zinc cadmium sulfide gas over Winnipeg, St. Louis, Minneapolis, Fort Wayne, the Monocacy River Valley in Maryland, and Leesburg, Virginia. Their intent is to determine how efficiently they could disperse chemical agents.

1953: Joint Army-Navy-CIA experiments are conducted in which tens of thousands of people in New York and *San Francisco* are exposed to the airborne germs *Serratia marcescens* and *Bacillus globigii*.

In 1953, a series of 36 tests was conducted on citizens of Winnipeg in Canada. Our government lied to the Winnipeg mayor, assuring him that the tests were non-toxic and defense-necessary. The actual purpose of these CIA-designed tests was to see how large a percentage of the population could be given chemical-induced cancer.

1953: CIA initiates Project MKULTRA. This is an eleven year research program designed to produce and test drugs and biological agents that would be used for mind control and behavior modification. Six of the subprojects involved testing the agents on unwitting human beings.

1955: The CIA, in an experiment to test its ability to infect human populations with biological agents, releases a bacteria withdrawn from the Army's biological warfare arsenal over Tampa Bay, Fl.

1956: U.S. military releases mosquitoes infected with Yellow Fever over Savannah, Ga and Avon Park, Fl. Following each test, Army agents posing as public health officials test victims for effects.

1960's: The Governments well kept secret Project Shad. Classified tests of Project Shad, show how the Marine jets came screaming out of the night off a remote Pacific atoll, spraying a 100-mile-long aerosol cloud over five tugboats. Then the men started getting sick. Pentagon: Chem, bio tests involved U.S. troops The USS George Eastman decontaminates after a nuclear test. The ship was used to monitor nuclear tests in the 1950s and for chemical and biological warfare tests in the '60s. WASHINGTON (CNN) -- The Pentagon revealed for the first time Thursday that almost 3,000 U.S. military personnel were involved in Cold War-era tests involving actual chemical and biological agents.

<http://www.cnn.com/2002/US/05/23/pentagon.chem.bio/index.html>

[http://www.signonsandiego.com/news/metro/20020715-9999\\_1m15gas.html](http://www.signonsandiego.com/news/metro/20020715-9999_1m15gas.html)

1965: Project CIA and Department of Defense begin Project MKSEARCH, a program to develop a capability to manipulate human behavior through the use of mind-altering drugs.

1965: Prisoners at the Holmesburg State Prison in Philadelphia are subjected to dioxin, the highly toxic chemical component of Agent Orange used in Viet Nam. The men are later studied for development of cancer, which indicates that Agent Orange had been a suspected carcinogen all along.

1970: United States intensifies its development of ethnic weapons (Military Review, Nov. 1970), designed to selectively target and eliminate specific ethnic groups who are susceptible due to genetic differences and variations in DNA.

1975: The virus section of Fort Detrick's Center for Biological Warfare Research is renamed the Fredrick Cancer Research Facilities and placed under the supervision of the National Cancer

Institute (NCI). It is here that a special virus cancer program is initiated by the U.S. Navy, purportedly to develop cancer-causing viruses. It is also here that retrovirologists isolate a virus to which no immunity exists. It is later named HTLV (Human T-cell Leukemia Virus).

Congressional hearings of 1975, 1977 and 1994 confirm that US Department of Health has used the American population as guinea pigs since WWII. Rutgers professor Leonard Cole collected from U.S. military records a horrifying list of biological and chemical agents furtively tested on American and Canadian civilian populations.

1977: Senate hearings on Health and Scientific Research confirm that 239 populated areas had been contaminated with biological agents between 1949 and 1969. Some of the areas included *San Francisco*, Washington, D.C., Key West, Panama City, Minneapolis, and St. Louis.

1987: Department of Defense admits that, despite a treaty banning research and development of biological agents, it continues to operate research facilities at 127 facilities and universities around the nation.

1990: More than 1500 six-month old black and hispanic babies in Los Angeles are given an experimental measles vaccine that had never been licensed for use in the United States. CDC later admits that parents were never informed that the vaccine being injected to their children was experimental.

1994: With a technique called gene tracking, Dr. Garth Nicolson at the MD Anderson Cancer Center in Houston, TX discovers that many returning Desert Storm veterans are infected with an altered strain of *Mycoplasma incognitus*, a microbe commonly used in the production of biological weapons. Incorporated into its molecular structure is 40 percent of the HIV protein coat, indicating that it had been man-made.

1994: U.S. military aircraft began dropping a gel substance on the tiny town of Oakville near the Pacific coast. Everybody in town came down with flu and pneumonia-like symptoms. Some people were hospitalized and remained ill for months. Pets and barnyard animals died. The gel material was tested by a number of government and private labs which found human blood cells and nasty bacteria, including a modified version of *pseudomonas fluorescens*, cited in over 160 military papers as an experimental biowarfare bacteria.

1994: Senator John D. Rockefeller issues a report revealing that for at least 50 years the Department of Defense has used hundreds of thousands of military personnel in human experiments and for intentional exposure to dangerous substances. Materials included mustard and nerve gas, ionizing radiation, psychochemicals, hallucinogens, and drugs used during the Gulf War .

1995: Dr. Garth Nicolson, uncovers evidence that the biological agents used during the Gulf War had been manufactured in Houston, TX and Boca Raton, Fl and tested on prisoners in the Texas Department of Corrections.

1996: Department of Defense admits that Desert Storm soldiers were exposed to chemical

agents.

1997: Eighty-eight members of Congress sign a letter demanding an investigation into bioweapons use Gulf War Syndrome.

1999: Ermina Cassani has investigated nation-wide reports of biological waste being dropped on neighborhoods from low-flying planes. Cassani investigated over 30 different yuk drops during the years 1998 and 1999. In 1998, she obtained a sample that looked like dried blood from a Michigan house. Examining this material, a University of Michigan lab found *pseudomonas fluorescens*, the same bug used on Oakville. It can cause horrible human infections including fatal shock, and because of its glowing properties, it allows the military to track its path.

In 1999, Jonathan Moreno of Clinton's Committee on Human Radiation Experiments, also confirmed in his book *Undue Risk* decades of military-intelligence experimentation on civilians without their knowledge or consent.

Vaccinia/Rabies Wildlife Bait Dropped From The Sky

<http://www.rense.com/general32/cvvh.htm>

## APPENDIX F

### STAND FOR NO SPRAY

**The Mission of The California Alliance to Stop the Spray (CASS) is to provide an organizational vehicle by which residents of the state protect their unalienable rights to safety and privacy, and to not have their persons or property, including public areas, sprayed with chemicals or any other substance.**

Therefore, C.A.S.S. would support a platform to ally organizations that reflects this mission.

So we would suggest the following:

(Protection of Rights and Safety)

C.A.S.S.:

Re-affirms individual sovereignty and unalienable rights to private property and safety as institutionalized in both the California and United States Constitutions, and

Reaffirms the California State Regulation and the Nuremberg Code that prohibit Medical Experiment on Humans without their Informed Consent and

Reaffirms as such:

- 1) Opposes the State and Federal program of aerial spraying for LBAM except on private agricultural lands as requested by the owner.**
- 2) Opposes the State and Federal program of pesticide treatment for LBAM on private property except as requested by the owner.**
- 3) Opposes exposure of the public to any substance that has the potential to cause health or environmental hazard, so the burden of proof of safety is with the initiating party, subject to truly independent review and including fair public representation.**

C.A.S.S.:

Re-affirms the Rio Declaration on Environment and Development which establishes the right to information about environmental toxics to which they may be exposed and to participate in the decision making process, and as such:

- 4) Demands full disclosure to the public of all ingredients in any pesticide formula to which they might be exposed.**

(Solutions)

C.A.S.S.:

- 5) Calls for a re-classification of LBAM as an established species and a termination of the “State of Emergency.”**
- 6) Supports healthy agricultural growing practices that are naturally resistant to pests and do not need to rely on a continuous cycle of pesticide use.**
- 7) Supports the type of healthy pest management “best practices” techniques used successfully in New Zealand, should LBAM ever get out of balance and become a problem. In addition to intercropping, these include enhancing natural predators, employing insect growth regulators and trapping.**

## **APPENDIX G**

### **NOTES ON SOLUTIONS (see p. 8)**

#### **(#1)**

Change the Pest Rating! An “A” pest rating requires quarantine and certain eradication efforts. In light of recent research, LBAM should be downgraded to a “C,” “Q” or “D.” which would eliminate the State of Emergency” and halt the spray.

#### **CDFA PLANT INDUSTRY GUIDELINES FOR ESTABLISHING OR CHANGING PEST RATINGS ACTION ORIENTED RATING SYSTEM**

##### **DEFINITIONS**

“A” – An organism of known economic importance subject to state (or commissioner when acting as a state agent) enforced action involving: eradication, quarantine regulation, containment, rejection, or other holding action.

“B” – An organism of known economic importance subject to: eradication, containment, control or other holding action at the discretion of the individual county agricultural commissioner.

or

An organism of known economic importance subject to state endorsed holding action and eradication only when found in a nursery.

“C” – An organism subject to no state enforced action outside of nurseries except to retard spread. At the discretion of the county agricultural commissioner.

or

An organism subject to no state enforced action except to provide for pest cleanliness in nurseries.

“Q” – An organism or disorder requiring temporary “A” action pending determination of a permanent rating. The organism is suspected to be of economic importance but its status is uncertain because of incomplete identification or inadequate information.

In the case of an established infestation, at the discretion of the Director, the Department may conduct surveys and may convene the Division Pest Study Team to determine a permanent rating.

“D: - No action (Parasites, predators, and organisms of little or no economic importance).

#### **IV, PROCEDURE FOR CHANGING ESTABLISHED RATINGS**

A. Any interested person may recommend a change in an established rating by submitting a request to the Assistant Director for Plant Industry. The Assistant Director will refer the request to the appropriate primary state professional.

B. To change an ”A”, “B”, “C”, or D” rating, the proposer presents supporting documentation to the appropriate primary state professional, and they reach agreement on the proposed rating change.

**(# 10, 13 & 18)**

Q - Why should residents bother with legislative actions and law suits if the USDA, CDFA and the Governor are already in violation of so many existing laws?

A - It attracts media attention which leads to increased transparency, particularly through Freedom of Information Act (FOIA) and Subpoena, It gathers political support. It exposes unfair and unhealthy practices by politicians, government agencies and corporations which can begin to sway the public opinion upon which their power ultimately rests. And sometimes we get new and better laws which at least support law suits to help enforce fair treatment.

Q - If the government has the Doctrine of Sovereign Immunity, the Emergency Powers Act and the Supremacy Clause [http://members.tripod.com/C\\_E\\_A\\_S\\_E/sigler.html](http://members.tripod.com/C_E_A_S_E/sigler.html) at their disposal to *override any existing laws*, (so that you have to win two or three times in court to stop the spray) is there anything we can do that would actually stop the spraying?

A - Yes, the USDA has certain criteria, set forth in their Emergency Programs Manual (p.92) under which an emergency program can be terminated.

- 1) The emergency project successfully eradicates the target pest.
- 2) The target pest becomes established and available resources are insufficient for eradication.**
- 3) The target pest becomes established and a domestic quarantine is established.
- 4) Control measures (i.e., pest management, biological control) are found and an emergency project is no longer necessary.**
- 5) Sociopolitical opposition prevents emergency action.**
- 6) The plant pest is reclassified, so that it is no longer an actionable pest.**

Four of these six conditions (highlighted) appear to be viable causes for ending this aerial pesticide assault:

Regarding #2) Numerous experts are in agreement the moth is already established and ineradicable.

Regarding #4) Control measures, if needed have already been proven in New Zealand, Australia and Hawaii.

Regarding #5) The sociopolitical opposition is already vast, mounting and just beginning to reach into the other seven counties, beyond Monterey and Santa Cruz, which are slated for spraying.

Regarding #6) The LBAM can justifiably be downgraded in its classification and the so-called emergency goes away and the health dangers, economic impacts, expensive law suits and initiatives can disappear.

**(#11)**

**Government Enforcement of Agency Violations**

Creation of the Office of Environmental and Democracy Law Enforcement in the Attorney General's Office. This is needed to provide enforcement of these laws when a public agency, which is already defended by the AG's office, fails to follow important public laws.

This office will vigorously enforce California's Environment and Democracy protection laws and Constitutional rights with priority for our RIGHT TO SAFETY, PUBLIC RECORDS REQUESTS, OPEN MEETINGS, CEQA, COASTAL ACT, and PROTECTION FOR ENDANGERED SPECIES and their habitats, CLEAN WATER, CLEAN AIR, and CLEAN FOOD LAWS.

**(#21)**

**Adopt ordinances** banning corporate chemical and radioactive bodily trespass, refusing to recognize corporate constitutional "rights" and to prohibit corporate rights from being used to override the rights of human and natural communities.

(See Community Environmental Legal Defense Fund)

<http://www.celdf.org/Ordinances/tabid/61/Default.aspx>

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