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RENOWNED ENVIRONMENTAL LAW FIRM INITIATES FIRST LEGAL ACTION AGAINST STATE AGENCY DERELICT IN ITS DUTY

Violations of law and logic cited in apple moth suit

April 26, 2010 (Fairfax, CA) --- On April 19, The Law Offices of Stephan C. Volker, an Oakland public-interest law firm famous for its successful litigation on behalf of the environment, filed in Sacramento the first suit against the California Department of Food and Agriculture (CDFA) for its violations of the California Environmental Quality Act (CEQA). The suit demanded that CDFA actually comply with CEQA in the matter of the agency's recent Environmental Impact Report (EIR) on its Light Brown Apple Moth (LBAM) program.

Frank Egger, President of North Coast Rivers Alliance and lead plaintiff, says "We aspire to live governed by laws and not by caprice. No state agency and no corporation is above the law. Our legal action demands that the State of California abide by its own laws enacted to protect the people and environment of California."

In addition to bringing suit against political appointee A.G. Kawamura, California's Secretary of Agriculture, the complaint also names the currently-known manufacturers of the pesticides intended for use in the CDFA LBAM program. The manufacturers include Aberdeen Road Company (Emigsville, PA), Pacific Biocontrol Corporation (Vancouver, WA), and ISCA Technologies Incorporated (Riverside, CA).

The lawsuit addresses itself to some of the most serious problems with CDFA's EIR. Perhaps the most troubling flaw in the EIR is that the entire CDFA LBAM program was predicated on the eradication of the moth from California. This definition of the LBAM program as one where California was to become entirely LBAM-free was asserted by CDFA as recently as March 10, 2010; yet by March 22, 2010, the program had been switched to one, which, according to CDFA, is about "keeping LBAM from attaining damaging levels".

However, CDFA is attempting to use the same EIR for a program which has changed both focus and duration; the EIR was for an eradication program with an expected termination date of 2015. The CDFA's new LBAM control program could be extended through 2017, and has no end date.

As spelled out in the language of the complaint, "by substantially modifying the project's scope and goals after the Final EIR was already published, CDFA failed to create a proper EIR, as determined by case law in 1977." Other violations of CEQA can be found here in the text of the complaint: www.dontspraycalifornia.org/VolkerLBAMComplaint041910.pdf.

The Volker lawsuit also speaks to potential harm to climate change, air quality, human and environmental health, and the status of special species, all of which would be affected by the materials intended for use in CDFA's LBAM program. It also addresses some of the many unscientific assertions that have characterized the CDFA LBAM program from its inception.

Plaintiffs named in the lawsuit live in LBAM treatment zones ranging from Monterey County to Marin County; some are among those injured in the 2007 aerial spraying of pesticides for LBAM in the Monterey Bay Area.

The Volker law firm has succeeded in a wide range of exemplary legal victories for the environment, including protections for Lake Tahoe and Joshua Tree, and the listing of Big Horn Sheep as an endangered species. It was also successful in having the United States Environmental Protection Agency outlaw further use of Checkmate, the LBAM-associated pesticide used in the aerial spraying of Monterey and Santa Cruz Counties in the fall of 2007.

LBAM is a leafroller native to Tasmania, and was officially detected in California in 2007. It has caused no documented damage in California. Thus far, CDFA has spent close to \$50 million on its LBAM program, and the United States Department of Food and Agriculture (USDA) has spent almost \$100 million. In March of this year, more than 100 growers and farmers, owners of large and small operations, both conventional and organic, signed a letter asking that the LBAM program be ended.

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