

1 Justin Augustine (CA Bar # 235561)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 351 California Street, Suite 600
4 San Francisco, CA 94104
5 Telephone: (415) 436-9682
6 Facsimile: (415) 436-9683
7 jaugustine@biologicaldiversity.org

8 Michael W. Graf (CA Bar # 136172)
9 Law Offices
10 227 Behrens Street
11 El Cerrito, CA 94530
12 Telephone: (510) 525-7222
13 Facsimile: (510) 525-1208
14 mwgraf@aol.com

15 Attorneys for Plaintiff

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 CENTER FOR BIOLOGICAL DIVERSITY,)
20 a non-profit corporation,)
21 Plaintiff,)

22 v.)

23 ENVIRONMENTAL PROTECTION)
24 AGENCY *et al.*,)

25 Defendants, and)

26 CROPLIFE AMERICA, RISE, AND)
27 RECKITT BENCKISER, INC.,)

28 Intervenor-Defendants.)

Case No.: 07-2794-JCS

**STIPULATED INJUNCTION AND
[PROPOSED] ORDER**

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

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

12 WHEREAS, CBD filed amended complaints to include an additional 32 pesticide active
13 ingredients for which CBD similarly alleges that EPA has failed to comply with Section 7 of the
14 ESA regarding their potential impacts on the species listed immediately above (hereinafter, all
15 75 pesticide active ingredients at issue will collectively be referred to as “Pesticides”);

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

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

24 WHEREAS, EPA maintains that it cannot determine the effects, if any, of the Pesticides
25 on the tidewater goby, delta smelt, California clapper rail, salt marsh harvest mouse, California
26 tiger salamander, San Francisco garter snake, California freshwater shrimp, San Joaquin kit fox,
27 Alameda whipsnake, valley elderberry longhorn beetle, and Bay checkerspot butterfly, and
28 define appropriate protective measures, if any, until they have completed further scientific

1 analyses, which may include, but are not limited to, further review under the Federal Insecticide,
2 Fungicide, and Rodenticide Act (“FIFRA”), §§ 7 U.S.C. 136-136(y), effects determinations
3 made pursuant to the ESA, or consultation with the United States Fish and Wildlife Service
4 (“FWS”) under the ESA, as appropriate;

5 WHEREAS, CBD and EPA, through their authorized representatives, have reached
6 agreement on the terms of a settlement, which is captured in the form of this Stipulated
7 Injunction, that they consider to be a just, fair, adequate, and equitable resolution of the issues in
8 this case;

9 WHEREAS, CBD and EPA agree that this Stipulated Injunction is in the public interest
10 and is an appropriate way to resolve the remaining disputed issues;

11 WHEREAS, the EPA published in the Federal Register a request for public comment on
12 the terms of this Stipulated Injunction, subsequently reviewed all comments received, and
13 thereafter conferred with CBD and Intervenor-Defendants with respect to any comments that
14 EPA felt warranted reconsideration or revision of any provision in this Stipulated Injunction,
15 with any resulting changes reflected herein;

16 NOW, THEREFORE, CBD AND EPA STIPULATE AS FOLLOWS:

17
18 **SECTION 7 CONSULTATION SCHEDULE**

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

20 Pursuant to the schedule delineated in Section 2, the EPA shall make effects
21 determinations and initiate consultation, as appropriate, with the United States Fish and Wildlife
22 Service, pursuant to applicable regulations in effect at the time when the determination is made,
23 regarding the potential effects of the Pesticides on the tidewater goby, delta smelt, California
24 clapper rail, salt marsh harvest mouse, California tiger salamander, San Francisco garter snake,
25 California freshwater shrimp, San Joaquin kit fox, Alameda whipsnake, valley elderberry
26 longhorn beetle, and Bay checkerspot butterfly in the greater San Francisco Bay Area, including
27 the Bay Delta, specifically covering the following California counties — Marin, Sonoma, Napa,
28 Solano, Contra Costa, Alameda, Santa Clara, and San Mateo.

1 **2. Effects Determinations**

2 **a. Schedule for Compliance for 43 Pesticides in Original Complaint Plus Two**
 3 **of the Pesticides Added via Amended Complaint**

4 EPA shall make effects determinations for the following active ingredients for the
 5 specific species listed at a minimum rate of four per quarter, with the first quarter ending on
 6 March 31, 2010 so that EPA completes these effects determinations by March 31, 2012.¹

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

23 ¹ EPA has already made effects determinations for ten of the 43 Pesticides in Plaintiff's original complaint. On
 24 October 20, 2008, EPA completed effect determinations for permethrin for the California clapper rail, the salt
 25 marsh harvest mouse, the San Francisco garter snake, and the Bay checkerspot butterfly; and for phorate for the San
 26 Joaquin kit fox, valley elderberry-longhorn beetle, and the Bay checkerspot butterfly. On February 20, 2009, EPA
 27 completed effect determinations for 2,4-D for the Alameda whipsnake, and for atrazine for the delta smelt. On June
 28 20, 2009 EPA completed effect determinations for alachlor for the delta smelt; and for endosulfan for the salt marsh
 harvest mouse, California tiger salamander, San Francisco garter snake, San Joaquin kit fox, valley elderberry
 longhorn beetle, and the Bay checkerspot butterfly. On October 20, 2009, EPA completed effect determinations for
 chlorpyrifos for the delta smelt, California clapper rail, salt marsh harvest mouse, California tiger salamander, San
 Francisco garter snake, California freshwater shrimp, San Joaquin kit fox, valley elderberry longhorn beetle, and
 Bay checkerspot butterfly; for strychnine for the California tiger salamander, and San Joaquin kit fox; for
 thiobencarb for the delta smelt; and for trifluralin for the delta smelt, San Francisco garter snake, and San Joaquin
 kit fox.

1	Brodifacoum	salt marsh harvest mouse, San Joaquin kit fox,
2		Alameda whipsnake
3	Bromadiolone	salt marsh harvest mouse, San Joaquin kit fox,
4		Alameda whipsnake
5	Bromethalin	salt marsh harvest mouse, Alameda whipsnake
6	Carbaryl	delta smelt
7	Carbofuran	delta smelt, San Francisco garter snake, San
8		Joaquin kit fox, valley elderberry longhorn beetle
9	Chlorophacinone	salt marsh harvest mouse, California tiger
10		salamander, San Joaquin kit fox, Alameda
11		whipsnake
12	Cholecalciferol	salt marsh harvest mouse
13	Diazinon	tidewater goby, delta smelt
14	Difenacoum	salt marsh harvest mouse, San Joaquin kit fox,
15		Alameda whipsnake
16	Difethialone	salt marsh harvest mouse, San Joaquin kit fox,
17		Alameda whipsnake
18	Diphacinone	salt marsh harvest mouse, California tiger
19		salamander, San Joaquin kit fox, Alameda
20		whipsnake
21	Diquat dibromide	delta smelt
22	EPTC (eptam)	delta smelt
23	Magnesium phosphide	San Francisco garter snake, San Joaquin kit fox,
24		Alameda whipsnake
25	Malathion	delta smelt, California tiger salamander
26	Maneb	California tiger salamander
27	Mancozeb	California tiger salamander
28	Metam sodium	California tiger salamander

1	Methoprene	California tiger salamander
2	Methyl bromide	California tiger salamander
3	Metolachlor	delta smelt
4	Naled	California clapper rail, San Francisco garter snake,
5		San Joaquin kit fox, valley elderberry longhorn
6		beetle, Bay checkerspot butterfly
7	Oryzalin	California tiger salamander
8	Permethrin	Valley elderberry longhorn beetle
9	Phosmet	California tiger salamander
10	Potassium nitrate	San Francisco garter snake, San Joaquin kit fox,
11		Alameda whipsnake
12	S-metolachlor	delta smelt, California tiger salamander
13	Simazine	delta smelt
14	Sodium nitrate	San Francisco garter snake, San Joaquin kit fox,
15		Alameda whipsnake
16	Warfarin	salt marsh harvest mouse, Alameda whipsnake
17	Zinc phosphide	salt marsh harvest mouse, Alameda whipsnake

18

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

23 **b. Schedule for Compliance for Remaining Pesticides Added via Amended**
24 **Complaint**

25 EPA shall make effects determinations for the following pesticides for the specific
26 species listed at a minimum rate of no less than three per quarter, with the first quarter ending
27 June 30, 2012, so that EPA completes all effects determinations by September 30, 2014.

28

1	<u>Pesticide</u>	<u>Species</u>
2	Bensulide, Beta-cyfluthrin,	San Francisco garter snake, California tiger
3	Bifenthrin, Cyfluthrin, Cyhalothrin	salamander, tidewater goby, California clapper
4	(lambda), Cypermethrin,	rail, California freshwater shrimp, delta smelt,
5	Deltamethrin, Dimethoate,	valley elderberry longhorn beetle, and Bay
6	Disulfoton, Esfenvalerate,	checkerspot butterfly.
7	Ethoprop, Fenpropathrin,	
8	Fluvalinate, Imidacloprid,	
9	Methamidophos, Methidathion,	
10	Methomyl, Oxydemeton-methyl,	
11	Oxyfluorfen, Phenothrin,	
12	Propargite, Resmethrin,	
13	Tetramethrin, Tralomethrin, and	
14	Zeta-cypermethrin	
15		
16		
17	Chlorothalonil:	San Francisco garter snake, California tiger
18		salamander, tidewater goby, California clapper rail,
19		California freshwater shrimp, delta smelt, Bay
20		checkerspot butterfly
21	Fipronil:	San Francisco garter snake, California tiger
22		salamander, tidewater goby, California clapper rail,
23		California freshwater shrimp, delta smelt, Bay
24		checkerspot butterfly
25	PCNB:	San Francisco garter snake, California tiger
26		salamander, tidewater goby, California clapper rail,
27		California freshwater shrimp, delta smelt, Bay
28		checkerspot butterfly

1 Pendimethalin: Bay checkerspot butterfly
 2 Sodium cyanide: San Joaquin kit fox
 3 Strychnine: Alameda whipsnake, salt marsh harvest mouse, San
 4 Francisco garter snake

5 **c. Urban Pesticides**

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

17 **INTERIM INJUNCTIVE RELIEF**

18 **3. Use Authorizations Enjoined, Vacated, and Set Aside.**

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

23 **Tidewater Goby**

24 EPA's authorization of any use of Bensulide, Beta-cyfluthrin, Bifenthrin, Chlorothalonil,
 25 Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Diazinon, Dimethoate,
 26 Disulfoton, Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid,
 27 Methamidophos, Methidathion, Methomyl, Oxydemeton-methyl, Oxyfluorfen, PCNB,
 28 Phenothrin, Propargite, Resmethrin, Tetramethrin, Tralomethrin, and Zeta-cypermethrin is

1 hereby ENJOINED, VACATED, and SET ASIDE in

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

4 **Applicable Habitat.** For the tidewater goby, “habitat” means lagoons, estuaries, and
 5 backwater marshes that are adjacent to the Pacific Ocean, and freshwater streams
 6 upgradient and tributary to brackish habitats, but only to the extent that any such
 7 ecological features are found within the eight counties specifically identified in the
 8 Complaint (and in this Stipulated Injunction) in the following sections of California:²
 9 M01S06W21, M07S05W33, M05N10W02, M05N10W03, M05N10W14, M05N10W15,
 10 M05N10W23, M06N10W35, M06N11W14, M06N11W15, M06N11W22, M07S05W15,
 11 M07S05W16, M08S05W04, M08S05W05, M08S05W09, M08S05W21.

12
13 **Delta Smelt**

14 EPA’s authorization of any use of Alachlor, Atrazine, Bensulide, Beta-cyfluthrin,
 15 Bifenthrin, Carbaryl, Carbofuran, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin
 16 (lambda), Cypermethrin, Deltamethrin, Diazinon, Dimethoate, Diquat dibromide, Disulfoton,
 17 EPTC (eptam), Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid,
 18 Malathion, Methamidophos, Methidathion, Methomyl, Metolachlor, Oxydemeton-methyl,
 19 Oxyfluorfen, PCNB, Phenothrin, Propargite, Resmethrin, S-metolachlor, Simazine,
 20 Tetramethrin, Thiobencarb, Tralomethrin, Trifluralin and Zeta-cypermethrin is hereby
 21 ENJOINED, VACATED, and SET ASIDE in

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

27
28 ² All section numbers in this document are based on the California Department of Pesticides Regulation PLSNET coverage.

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

9
 10 **California Clapper Rail**

11 EPA’s authorization of any use of Acephate, Azinphos-Methyl, Bensulide, Beta-
 12 cyfluthrin, Bifenthrin, Chlorothalonil, Chlorpyrifos, Cyfluthrin, Cyhalothrin (lambda),
 13 Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Esfenvalerate, Ethoprop, Fenpropathrin,
 14 Fipronil, Fluvalinate, Imidacloprid, Methamidophos, Methidathion, Methomyl, Naled,
 15 Oxydemeton-methyl, Oxyfluorfen, PCNB, Permethrin, Phenothrin, Propargite, Resmethrin,
 16 Tetramethrin, Tralomethrin, and Zeta-cypermethrin applied either aerially or by ground is
 17 hereby ENJOINED, VACATED, and SET ASIDE in the following **Applicable Habitat:**

- 18 1. all areas within 300 feet of the high water line for tidal flow of salt and brackish
 19 water marshes ; and
 20 2. all areas within 200 feet of a cordgrass/pickleweed stand, as shown in
 21 Attachment A, if any part of such stand occurs within 100 feet of the high water
 22 line of a salt or brackish water marsh.

23 The provisions in 1 and 2 above apply only to the extent that any such ecological features
 24 are found within the eight counties specifically identified in the Complaint (and in this
 25 Stipulated Injunction) in the following sections of California: M01N04W19,
 26 M01N04W20, M01N04W29, M01N04W30, M01N06W10, M01N06W11, M01N06W14,
 27 M01N06W15, M01N06W22, M01N06W23, M01S04W15, M01S04W16, M01S04W20,
 28 M01S04W21, M01S04W22, M02N01W05, M02N01W06, M02N02W01, M02N02W02,

1 M02N02W03, M02N02W04, M02N02W09, M02N02W10, M02N04W20, M02N05W19,
2 M02N06W02, M02N06W03, M02N06W10, M02N06W11, M02N06W14, M02N06W15,
3 M02N06W16, M02N06W21, M02N06W23, M02N06W24, M02S03W17, M02S03W18,
4 M02S03W19, M02S03W20, M02S03W21, M02S03W28, M02S03W29, M02S04W13,
5 M02S04W14, M02S04W24, M03N06W03, M03N06W04, M03N06W09, M03N06W10,
6 M03N06W19, M03N06W20, M03N06W21, M03N06W22, M03N06W26, M03N06W28,
7 M03N06W35, M03N01W19, M03N01W30, M03N01W31, M03N02W03, M03N02W04,
8 M03N02W10, M03N02W21, M03N02W24, M03N02W28, M03N02W29, M03N02W31,
9 M03N02W32, M03N03W27, M03N03W28, M03N03W33, M03N03W34, M03N04W01,
10 M03N04W02, M03N04W11, M03N04W25, M03N04W26, M03N04W35, M03N04W36,
11 M03S03W10, M03S03W11, M03S03W14, M03S03W15, M03S03W23, M03S03W24,
12 M03S03W25, M03S03W26, M03S03W35, M03S03W36, M03S05W27, M04N01W04,
13 M04N01W05, M04N01W06, M04N01W16, M04N01W17, M04N01W18, M04N01W19,
14 M04N01W20, M04N01W21, M04N02W12, M04N02W13, M04N02W14, M04N02W26,
15 M04N04W03, M04N04W04, M04N04W08, M04N04W09, M04N04W10, M04N04W16,
16 M04N04W17, M04N04W20, M04N04W34, M04N04W35, M04N05W08, M04N05W09,
17 M04N05W15, M04N05W16, M04N05W17, M04N05W21, M04N05W23, M04N05W24,
18 M04N05W27, M04N05W28, M04N05W33, M04N05W34, M04N10W11, M04S03W01,
19 M04S03W31, M04S03W32, M04S03W33, M04S04W16, M04S04W17, M04S04W22,
20 M05N01W32, M05N01W33, M05S02W02, M05S02W03, M05S02W04, M05S02W08,
21 M05S02W09, M05S02W10, M05S02W13, M05S02W14, M05S02W15, M05S02W16,
22 M05S02W17, M05S02W23, M05S02W24, M05S02W29, M05S02W30, M05S02W31,
23 M05S02W32, M05S03W03, M05S03W04, M05S03W05, M05S03W06, M05S03W07,
24 M05S03W08, M05S03W09, M05S03W10, M05S03W14, M05S03W15, M05S03W16,
25 M05S03W22, M05S04W01, M05S04W12, M06S02W04, M06S02W09.

1 **Salt Marsh Harvest Mouse**

2 EPA's authorization of any use of Acephate, Brodifacoum, Bromadiolone, Bromethalin,
3 Chlorophacinone, Chlorpyrifos, Cholecalciferol, Difenacoum, Difethialone, Diphacinone,
4 Endosulfan, Permethrin, Strychnine, Warfarin, and Zinc phosphide applied either aerially or by
5 ground is hereby ENJOINED, VACATED, and SET ASIDE in the following **Applicable**

6 **Habitat:**

- 7 1. all areas within 300 feet of the high water line for tidal flow of salt and brackish
8 water marshes; and
9 2. all areas within 200 feet of a cordgrass/pickleweed stand, as shown in
10 Attachment A, if any part of such stand occurs within 100 feet of the high water
11 line of a salt or brackish water marsh.

12 The provisions in 1 and 2 above apply only to the extent that any such ecological features
13 are found within the eight counties specifically identified in the Complaint (and in this
14 Stipulated Injunction) in the following sections of California: M01N06W02,
15 M01N06W10, M01N06W11, M01N06W14, M01N06W15, M01N06W22, M01N06W23,
16 M02N01E05, M02N01E07, M02N01W01, M02N01W05, M02N01W06, M02N01W12,
17 M02N02W01, M02N02W02, M02N02W03, M02N02W04, M02N02W09, M02N02W10,
18 M02N02W11, M02N02W15, M02N02W16, M02N02W17, M02N05W25, M03N01E05,
19 M03N01E06, M03N01E07, M03N01E08, M03N01E17, M03N01E18, M03N01E20,
20 M03N01E21, M03N01E22, M03N01E25, M03N01E26, M03N01E27, M03N01E28,
21 M03N01E29, M03N01E30, M03N01E31, M03N01E32, M03N01E33, M03N06W03,
22 M03N06W04, M03N06W05, M03N06W09, M03N06W10, M03N01W02, M03N01W03,
23 M03N01W04, M03N01W09, M03N01W10, M03N01W11, M03N01W12, M03N01W13,
24 M03N01W14, M03N01W15, M03N01W16, M03N01W30, M03N01W31, M03N02W03,
25 M03N02W10, M03N02W15, M03N02W25, M03N02W26, M03N02W29, M03N02W30,
26 M03N02W31, M03N02W32, M03N02W35, M03N02W36, M03N03W28, M03N04W01,
27 M03N04W02, M03N04W05, M03N04W06, M03N04W08, M03N04W09, M03N04W10,
28 M03N04W11, M03N04W14, M03N04W15, M03N04W16, M03N04W22, M03N04W23,

1 M03N04W24, M03N04W25, M03N04W26, M03N04W27, M03N04W35, M03N04W36,
 2 M03N05W01, M03N05W05, M03N05W06, M03N05W07, M03N05W08, M03S02W31,
 3 M03S03W10, M03S03W11, M03S03W14, M03S03W15, M03S03W36, M04N01E19,
 4 M04N01W04, M04N01W05, M04N01W06, M04N01W07, M04N01W16, M04N01W17,
 5 M04N01W18, M04N01W19, M04N01W21, M04N01W22, M04N01W24, M04N01W27,
 6 M04N01W28, M04N01W29, M04N01W32, M04N01W33, M04N02W01, M04N02W02,
 7 M04N02W12, M04N02W13, M04N02W14, M04N02W19, M04N02W22, M04N02W27,
 8 M04N02W28, M04N04W04, M04N04W08, M04N04W09, M04N04W16, M04N04W17,
 9 M04N04W20, M04N04W32, M04N04W35, M04N05W15, M04N05W16, M04N05W21,
 10 M04N05W24, M04N05W28, M04N05W32, M04N05W33, M04N05W34, M04N05W35,
 11 M04N05W36, M04N06W06, M04N06W07, M04N06W08, M04N06W17, M04N06W18,
 12 M04N06W19, M04N06W20, M04N06W21, M04N06W28, M04N06W29, M04N06W30,
 13 M04N06W32, M04N06W33, M04N07W01, M04N07W02, M04N07W03, M04N07W12,
 14 M04N07W13, M04N07W24, M04S02W27, M04S02W28, M04S03W31, M04S03W32,
 15 M04S03W33, M05N01W31, M05N01W32, M05N01W33, M05N02W25, M05N02W35,
 16 M05N02W36, M05N04W33, M05N07W34, M05N07W35, M05S01W25, M05S01W26,
 17 M05S01W33, M05S01W34, M05S01W35, M05S01W36, M05S02W02, M05S02W03,
 18 M05S02W04, M05S02W08, M05S02W09, M05S02W10, M05S02W16, M05S02W17,
 19 M05S02W19, M05S02W25, M05S02W26, M05S02W29, M05S02W30, M05S02W32,
 20 M05S03W04, M05S03W05, M05S03W06, M05S03W07, M05S03W08, M05S03W15,
 21 M05S03W17, M05S03W18, M05S03W22, M05S03W24, M05S04W01, M05S04W12,
 22 M06S01W02, M06S01W03, M06S01W04, M06S01W06, M06S01W07, M06S01W09,
 23 M06S01W10, M06S02W01, M06S02W02, M06S02W03, M06S02W05, M06S02W10,
 24 M06S02W11.

25
 26 **California Tiger Salamander**

27 EPA's authorization of any use of Acephate, Aluminum Phosphide, Azinphos-methyl,
 28 Bensulide, Beta-cyfluthrin, Bifenthrin, Chlorophacinone, Chlorothalonil, Chlorpyrifos,

1 Cyfluthrin, Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Diphacinone,
2 Disulfoton, Endosulfan, Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate,
3 Imidacloprid, Malathion, Maneb, Mancozeb, Metam sodium, Methamidophos, Methidathion,
4 Methomyl, Methoprene, Methyl Bromide, Oryzalin, Oxydemeton-methyl, Oxyfluorfen, PCNB,
5 Phenothrin, Phosmet, Propargite, Resmethrin, S-metolachlor, Strychnine, Tetramethrin,
6 Tralomethrin, and Zeta-cypermethrin is hereby ENJOINED, VACATED, and SET ASIDE in

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

9 **Applicable Habitat.** For the California tiger salamander, “habitat” means fresh-water
10 (including natural or manmade (e.g., stock) ponds, slow-moving streams or pools within
11 streams, vernal pools, and other ephemeral or permanent water bodies which typically
12 support inundation during winter rains and hold water for a minimum of 12 weeks in a
13 year of average rainfall, but only to the extent that any such ecological features are found
14 within the eight counties specifically identified in the Complaint (and in this Stipulated
15 Injunction) in either (1) critical habitat designated for the California tiger salamander by
16 the FWS (70 Fed. Reg. 49380), as depicted by the FWS at <http://crithab.fws.gov/>, or (2) in
17 the following sections of California: M01N01E01, M01N01E02, M01N01E03,
18 M01N01E04, M01N01E12, M01N01E13, M01N01E20, M01N01E23, M01N01E24,
19 M01N01E28, M01N01W02, M01N02E05, M01N02E06, M01N02E07, M01N02E08,
20 M01N02E16, M01N02E17, M01N02E18, M01N02E26, M01N02E27, M01N02E28,
21 M01N02E33, M01N02E34, M01N02E35, M01N02E36, M01S01E15, M01S01E16,
22 M01S02E01, M01S02E02, M01S02E03, M01S02E10, M01S02E11, M01S02E12,
23 M01S02E13, M01S02E14, M01S02E15, M01S02E16, M01S02E17, M01S02E20,
24 M01S02E21, M01S02E22, M01S02E23, M01S02E24, M01S02E25, M01S02E26,
25 M01S02E27, M01S02E29, M01S02E33, M01S02E34, M01S02E35, M01S02E36,
26 M01S03E04, M01S03E05, M01S03E06, M01S03E07, M01S03E08, M01S03E09,
27 M01S03E17, M01S03E18, M01S03E19, M01S03E20, M01S03E21, M01S03E22,
28 M01S03E23, M01S03E26, M01S03E27, M01S03E28, M01S03E29, M01S03E30,

1 M01S03E31, M01S03E32, M01S03E35, M01S03E36, M02N01E28, M02N01E30,
2 M02N01E33, M02N01W21, M02N01W22, M02N01W25, M02N01W26, M02N01W27,
3 M02N01W28, M02N01W33, M02N01W34, M02N01W35, M02N01W36, M02S01E04,
4 M02S01E08, M02S01E09, M02S01E16, M02S01E17, M02S01E20, M02S01E21,
5 M02S01E22, M02S01E24, M02S01E25, M02S01E26, M02S01E27, M02S01E28,
6 M02S01E33, M02S01E34, M02S01E35, M02S01E36, M02S02E01, M02S02E02,
7 M02S02E03, M02S02E04, M02S02E09, M02S02E10, M02S02E11, M02S02E12,
8 M02S02E13, M02S02E14, M02S02E15, M02S02E25, M02S02E26, M02S02E27,
9 M02S02E28, M02S02E31, M02S02E33, M02S02E34, M02S02E35, M02S02E36,
10 M02S03E01, M02S03E02, M02S03E06, M02S03E08, M02S03E09, M02S03E10,
11 M02S03E16, M02S03E17, M02S03E18, M02S03E19, M02S03E20, M02S03E21,
12 M02S03E22, M02S03E23, M02S03E24, M02S03E26, M02S03E29, M02S03E30,
13 M02S03E31, M02S03E32, M02S03E33, M02S03E34, M02S03E35, M02S04E19,
14 M03S01E01, M03S01E02, M03S01E03, M03S01E14, M03S01E15, M03S01E22,
15 M03S01E23, M03S01E24, M03S01E25, M03S01E27, M03S01E28, M03S01E34,
16 M03S01E35, M03S01E36, M03S02E01, M03S02E04, M03S02E05, M03S02E12,
17 M03S02E13, M03S02E15, M03S02E16, M03S02E19, M03S02E21, M03S02E22,
18 M03S02E24, M03S02E30, M03S02E31, M03S02E32, M03S02E35, M03S03E04,
19 M03S03E05, M03S03E06, M03S03E07, M03S03E08, M03S03E10, M03S03E12,
20 M03S03E18, M03S03E19, M03S03E20, M03S03E21, M03S03E23, M03S03E25,
21 M03S03E26, M03S03E27, M03S03E28, M03S03E29, M03S03E30, M03S03E35,
22 M03S03E36, M03S04E17, M03S04E29, M03S04E30, M03S04E31, M03S04E32,
23 M04N01E34, M04N01W10, M04N01W11, M04S01E01, M04S01E02, M04S01E03,
24 M04S01E04, M04S01E09, M04S01E10, M04S01E11, M04S01E14, M04S01E16,
25 M04S01E17, M04S01E18, M04S01E22, M04S01E24, M04S01E27, M04S01E28,
26 M04S01E29, M04S01E33, M04S01E34, M04S01E35, M04S01W13, M04S01W24,
27 M04S02E07, M04S02E12, M04S02E13, M04S02E17, M04S02E18, M04S02E27,
28 M04S02E35, M04S02E36, M04S03E01, M04S03E07, M04S03E18, M05N01E07,

1 M05N01E14, M05N01E16, M05N01E17, M05N01E18, M05N01E19, M05N01E20,
 2 M05N01E21, M05N01E28, M05N01E29, M05N01E30, M05N01W10, M05N01W12,
 3 M05N01W13, M05N01W14, M05N01W15, M05N08W03, M05N08W04, M05N08W11,
 4 M05S01E02, M05S01E12, M05S01E19, M05S01E20, M05S01E23, M05S01E30,
 5 M05S01W03, M05S01W15, M05S01W16, M05S01W21, M05S01W22, M05S02E01,
 6 M05S02E08, M05S02E09, M05S02E10, M05S02E11, M05S03E06, M05S03W34,
 7 M06N07W31, M06N08W03, M06N08W04, M06N08W05, M06N08W06, M06N08W07,
 8 M06N08W08, M06N08W09, M06N08W10, M06N08W11, M06N08W14, M06N08W15,
 9 M06N08W16, M06N08W22, M06N08W26, M06N08W27, M06N08W32, M06N08W34,
 10 M06N08W35, M06N08W36, M06S02E22, M06S02E23, M06S02E24, M06S02E25,
 11 M06S02E26, M06S02E27, M06S02E35, M06S02E36, M06S03E31, M06S03W03,
 12 M06S03W04, M06S03W09, M06S03W10, M06S03W15, M06S03W16, M07N09W36,
 13 M07N08W05, M07N08W08, M07N08W19, M07N08W20, M07N08W28, M07N08W29,
 14 M07N08W30, M07N08W31, M07N08W32, M07N08W33, M07N08W34, M07N09W25,
 15 M07S01E25, M07S01E27, M07S01E28, M07S01E36, M07S02E03, M07S02E10,
 16 M07S02E11, M07S02E13, M07S02E14, M07S02E19, M07S02E24, M07S02E25,
 17 M07S02E28, M07S02E30, M07S02E31, M07S02E33, M07S03E19, M07S03E20,
 18 M08S02E15, M08S02E16, M08S02E34, M08S02E36, M09S02E03, M09S02E04,
 19 M09S02E09, M09S03E10, M09S03E11, M09S03E36, M09S04E15, M09S04E16,
 20 M09S04E21, M09S04E22, M10S03E08, M10S03E09, M10S03E10, M10S03E15,
 21 M10S03E16, M10S03E17, M10S03E22, M10S03E27, M10S03E28, M10S03E34,
 22 M10S05E10, M11S04E07, M11S04E12, M11S04E18, M11S04E29, M11S04E30.

23
 24 **San Francisco Garter Snake**

25 EPA's authorization of any use of Acephate, Aluminum Phosphide, Azinphos-methyl,
 26 Bensulide, Beta-Cyfluthrin, Bifenthrin, Carbofuran, Chlorothalonil, Chlorpyrifos, Cyfluthrin,
 27 Cyhalothrin (lambda), Cypermethrin, Deltamethrin, Dimethoate, Disulfoton, Endosulfan,
 28 Esfenvalerate, Ethoprop, Fenpropathrin, Fipronil, Fluvalinate, Imidacloprid, Magnesium

1 phosphide, Methamidophos, Methidathion, Methomyl, Naled, Oxydemeton-methyl,
2 Oxyfluorfen, PCNB, Phenothrin, Permethrin, Potassium nitrate, Propargite, Resmethrin, Sodium
3 nitrate, Strychnine, Tetramethrin, Tralomethrin, Trifluralin, and Zeta-cypermethrin is hereby
4 ENJOINED, VACATED, and SET ASIDE in

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

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

19
20 **California Freshwater Shrimp**

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

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

1 **Applicable Habitat.** For the California freshwater shrimp, “habitat” means all perennial
2 streams or intermittent streams with perennial pools, but only to the extent that any such
3 ecological features are found within the eight counties specifically identified in the
4 Complaint (and in this Stipulated Injunction) in the following sections of California:
5 M02N08W04, M02N08W05, M02N08W09, M02N08W10, M02N08W14, M02N08W15,
6 M02N08W16, M02N08W23, M07N11W11, M03N08W19, M03N08W29, M03N08W30,
7 M03N08W31, M03N08W32, M03N09W35, M03N09W36, M05N05W23, M05N05W24,
8 M05N05W25, M05N05W26, M05N06W02, M05N09W18, M05N09W19, M05N10W13,
9 M05N10W24, M06N06W05, M06N06W06, M06N06W07, M06N06W08, M06N06W16,
10 M06N06W17, M06N06W21, M06N06W27, M06N06W35, M06N09W04, M06N09W05,
11 M06N09W22, M06N09W23, M06N09W24, M06N10W12, M06N10W13, M06N10W14,
12 M06N10W17, M06N10W18, M06N10W19, M06N10W20, M06N10W21, M06N10W22,
13 M06N10W23, M06N10W24, M06N10W25, M06N10W27, M06N10W28, M06N11W13,
14 M06N11W14, M06N11W23, M07N09W33, M07N10W13, M07N10W14, M07N10W24,
15 M07N11W02, M07N11W03, M07N06W32, M07N09W17, M07N09W19, M07N09W20,
16 M08N07W01, M08N07W06, M08N11W15, M08N11W22, M08N11W27, M08N11W34,
17 M09N07W25, M09N07W31, M09N07W36.

18
19 **San Joaquin Kit Fox**

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

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

27 **Applicable Habitat.** For the San Joaquin kit fox, “habitat” means all denning areas,
28 defined as the 100 foot circular radius around the set of holes in the ground forming the

1 surface of the den, as depicted in the Department of Pesticide Regulation Endangered
 2 Species Project, San Joaquin kit fox, denning characteristics, attached hereto as
 3 Attachment B, but only to the extent that any such ecological features are found within the
 4 eight counties specifically identified in the Complaint (and in this Stipulated Injunction) in
 5 the following sections of California: M01N01E01, M01N01E02, M01N01E03,
 6 M01N01E04, M01N01E05, M01N01E34, M01N01E35, M01S01E02, M01S01E03,
 7 M01S01W25, M01S01W36, M01S02E16, M01S02E17, M01S02E21, M01S03E03,
 8 M01S03E04, M01S03E09, M01S03E10, M01S03E15, M01S03E16, M01S03E19,
 9 M01S03E21, M01S03E22, M01S03E23, M01S03E31, M01S03E32, M01S03E33,
 10 M01S03E35, M01S03E36, M01S04E31, M02N01E28, M02N01E32, M02N01E33,
 11 M02N01E35, M02N01E36, M02S01W01, M02S03E02, M02S03E03, M02S03E04,
 12 M02S03E05, M02S03E07, M02S03E10, M02S03E11, M02S04E07, M02S04E32,
 13 M03S03E04, M03S03E05, M03S04E06, M04S01E07, M04S01E18, M10S06E21,
 14 M10S06E22, M10S06E27, M10S06E28.

16 **Alameda Whipsnake**

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

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

23 **Applicable Habitat.** For the Alameda whipsnake, "habitat" means all areas described as
 24 shrub communities known as chaparral consisting of northern coastal sage scrub and
 25 coastal sage, and in open grasslands, oak savanna, and oak-bay woodland occurring within
 26 500 feet of such shrub communities, but only to the extent that any such ecological features
 27 are found within the eight counties specifically identified in the Complaint (and in this
 28 Stipulated Injunction) in either (1) critical habitat designated for the Alameda whipsnake

1 by the FWS (71 Fed. Reg. 58176), as depicted by the FWS at <http://crithab.fws.gov/>, or (2)
 2 in the following sections of California: M01N01E04, M01N01E08, M01N01E11,
 3 M01N01E12, M01N01E20, M01N01E21, M01N01E33, M01N02W17, M01N02W19,
 4 M01N02W20, M01N03W33, M01N04W36, M01S01E04, M01S01E05, M01S01E08,
 5 M01S01W17, M01S01W18, M01S01W30, M01S01W31, M01S02E28, M01S02E29,
 6 M01S02E32, M01S02E33, M01S02E34, M01S02W02, M01S02W03, M01S02W10,
 7 M01S02W11, M01S02W12, M01S02W14, M02N01E33, M02S02W07, M02S02W17,
 8 M02S02W28, M03S01W11, M03S01W19, M03S01W20, M03S01W29, M03S01W30,
 9 M03S01W32, M03S02W12, M04S01W05, M05S04E04.

10
 11 **Valley Elderberry Longhorn Beetle**

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

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

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

Bay Checkerspot Butterfly

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

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

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

4. Terminating Events.

The interim injunctive relief set forth above in Section 3 will terminate automatically for a FIFRA authorization for a particular use of any of the Pesticides covered under Section 2 (including those Pesticides identified in footnote 1) upon the completion of the consultation

1 obligation imposed under Section 7(a)(2) of the ESA and the implementing ESA consultation
2 regulations. The EPA shall provide Plaintiff with notice of completion of Section 7(a)(2)
3 consultation obligations made pursuant to this paragraph within 14 days of such determination,
4 by facsimile or electronic mail, addressed to Plaintiff's Counsel of Record in this matter.

5
6 **ACTIVITIES EXEMPTED FROM INTERIM INJUNCTIVE RELIEF**

7 **5. Particular Pesticide Programs Excluded.**

8 Notwithstanding Section 3, CBD and EPA agree that the use of the Pesticides specified
9 below is NOT ENJOINED, VACATED, OR SET ASIDE:

10 a. **Public Health Vector Control Programs.** The use of the Pesticides covered
11 under Section 3 above for:

- 12 1. the purpose of public health vector control when such program is
- 13 administered by public entities; or
- 14 2. use by certified applicators for control of a vector pest when such
- 15 control is necessary to respond to a federally or state declared public
- 16 health emergency.

17 b. **Invasive Species and Noxious Weed Programs.** Aquatic and non-aquatic uses
18 of the Pesticides covered under Section 3 above for control of state or federally
19 designated invasive species and noxious weeds when such program is
20 administered by public entities, so long as the following restrictions are
21 implemented:

- 22 1. application of the Pesticides shall be limited to localized spot treatments
- 23 using hand held devices and may not occur within 20 feet of protected
- 24 habitat areas for the 11 species as set forth in Section 3 above;
- 25 2. the Pesticides cannot be used when precipitation is occurring or is
- 26 forecast to occur within 24 hours;
- 27 3. all spraying must be overseen by a certified applicator; and
- 28 4. for 2, 4-D, only the amine formulation can be used.

1 **6. Endangered Species Act Approved Uses.**

2 Notwithstanding Section 3, CBD and EPA agree that the use of the Pesticides covered
3 under Section 3 above is NOT ENJOINED, VACATED, OR SET ASIDE where such use is
4 permissible under one or more of the following:

- 5 a. a “no jeopardy” biological opinion issued under ESA Section 7(a)(2) by the FWS
6 that addresses the use of the Pesticide and effects on any one or more of the
7 eleven species subject to this Stipulated Injunction, provided that such use
8 follows any “reasonable and prudent measures” established in connection with an
9 incidental take statement included with the FWS’s opinion;
- 10 b. a “reasonable and prudent alternative” identified in a “jeopardy” biological
11 opinion issued under ESA Section 7(a)(2) by the FWS that addresses the use of
12 the Pesticide and effects on any one or more of the eleven species subject to this
13 Stipulated Injunction provided that such use follows the “reasonable and prudent
14 alternatives,” and any “reasonable and prudent measures” established in
15 connection with an incidental take statement, included with the FWS’s opinion;
- 16 c. a written concurrence by the FWS in a “not likely to adversely affect”
17 determination made under ESA Section 7(a)(2) that addresses the use of the
18 Pesticide and effects on any of the eleven species subject to this Stipulated
19 Injunction;
- 20 d. an incidental take permit issued by the FWS under ESA Section 10(a) that
21 authorizes the take of any of the eleven species subject to this Stipulated
22 Injunction from application or use of the Pesticide.

23 **7. Specific Pesticide Product or Use Exceptions.**

24 Notwithstanding Section 3, CBD and EPA agree that the following uses of the Pesticides
25 covered under Section 3 above are NOT ENJOINED, VACATED, OR SET ASIDE:

- 26 a. use of the Pesticides in cattle ear tags;
- 27 b. indoor uses of the Pesticides;
- 28

- 1 c. tree injection applications of the Pesticides. However, the injection of the
2 pesticides acephate, aldicarb, azinphos-methyl, carbofuran, chlorpyrifos,
3 endosulfan, and phorate into elderberry trees occurring within the sections of land
4 identified in Section 3 relative to the valley elderberry longhorn beetle is not
5 permitted;
- 6 d. homeowner applications of the Pesticides to household potted plants;
- 7 e. use of the Pesticides in flea and tick collars for dogs and cats;
- 8 f. use of the Pesticides for spot treatments of wasp and hornet nests, provided that
9 such use occurs at least sixty feet from protected habitat areas for the 11 species
10 identified in Section 3 above;
- 11 g. individual tree removal using cut stump application of the Pesticides, provided
12 that such use occurs at least sixty feet from protected habitat areas for the 11
13 species identified in Section 3 above;
- 14 h. basal bark application of the Pesticides to individual plants, provided that such
15 use occurs at least sixty feet from protected habitat areas for the 11 species
16 identified in Section above;
- 17 i. use of the Pesticides (except brodifacoum, bromadiolone, difenacoum, and
18 difethialone) for control of rodents adjacent to residential buildings (e.g., houses,
19 apartment buildings, nursing homes, hospitals) or food handling, processing or
20 serving establishments, provided: (1) the pesticide is applied by a certified
21 applicator certified in a category that includes the use of rodenticides; and (2) the
22 pesticide is used in a tamper resistant bait station deemed to be a Tier 1 bait
23 station according to the standards described in the “Risk Mitigation Decision for
24 Ten Rodenticides” (EPA May 2008); and (3) the bait stations are placed within
25 10 feet of the structure;
- 26 j. use of the Pesticides for subterranean termite control, provided: (1) the pesticide
27 is applied by a certified applicator certified in a category that includes the use of
28

1 subterranean termite control products; and (2) the product is used within 10 feet
2 of the structure being treated for termites.

3
4 **NOTIFICATION REQUIREMENTS**

5 **8. Brochure Content**

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

- 7 a. The brochure shall 1) state that CBD and EPA have reached a Stipulated
- 8 Injunction setting forth a schedule for effect determinations and interim relief
- 9 pending completion of consultation, if appropriate, with respect to EPA’s
- 10 registration of certain pesticides within certain areas of California, 2) list those
- 11 eight counties in the greater San Francisco Bay Area, including the Bay Delta,
- 12 impacted by the agreed-upon relief in this Stipulated Injunction, and identify the
- 13 affected species relative to each county,³ 3) provide tips for reducing off-site
- 14 movement of pesticides, and 4) refer the reader to EPA’s website for further
- 15 information as noted below in Section 10.
- 16 b. The front cover of the brochure will incorporate the following heading and
- 17 statement and shall be in a large font and highly visible.

18 **WILDLIFE AND PESTICIDE HAZARDS**

19 **Some pesticide products may harm wildlife or their habitat.**

20 **9. Brochure Distribution**

21 The EPA shall distribute a copy of this brochure to all commercial certified applicators
22 of the Pesticides covered by Section 3 above that reasonably can be identified and located within
23

24 ³ tidewater goby: San Mateo
 25 delta smelt: Contra Costa, Solano
 26 clapper rail: San Mateo, Contra Costa, Solano, Sonoma, Marin, Napa, Alameda, Santa Clara
 27 salt marsh harvest mouse: San Mateo, Contra Costa, Solano, Sonoma, Marin, Napa, Alameda, Santa Clara
 28 tiger salamander: Contra Costa, Solano, Sonoma, Alameda, Santa Clara
San Francisco garter snake: San Mateo
freshwater shrimp: Sonoma, Marin, Napa
San Joaquin kit fox: Contra Costa, Alameda
Alameda whipsnake: Contra Costa, Alameda
valley elderberry Longhorn beetle: Solano
Bay checkerspot butterfly: San Mateo, Alameda

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

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

18 **10. Web-site Content**

19 EPA shall display on its website the following:

20 1) The full text of the Stipulated Injunction, 2) maps identifying the areas in the eight
21 California counties identified in this Stipulated Injunction where the interim injunction relief
22 applies, and 3) fact sheets for the 11 species identified in Section 3 that shall include, at a
23 minimum, the biology, habitat needs, and status under the Endangered Species Act for each such
24 species.

25 CBD and EPA agree that the maps provided by EPA on its website pursuant to this
26 Section may be relied on to determine where the interim injunctive relief applies under this
27 Stipulated Injunction.
28

1 **11. Point of Sale Notice Content**

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

- 4 a. The heading “Wildlife Hazard” in a large and visible font followed by the statement
5 that:

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

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

- 10 b. The notification shall also contain a prominent graphic.

11 **12. Point of Sale Distribution**

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

22 **13. Notification of Stipulated Injunction.**

23 The EPA is directed to mail copies of this Stipulated Injunction directly to all registrants
24 of the Pesticides covered by Section 3. The EPA also is directed to display the terms of this
25 Stipulated Injunction on EPA’s website.
26
27
28

1 **21.** Neither EPA’s act of entering into this Stipulated Injunction, nor anything contained in
2 this Stipulated Injunction, shall be interpreted as an acknowledgement, endorsement, and/or
3 agreement by EPA as to the necessity and/or appropriateness of the buffers agreed to in
4 connection with the interim restrictions set forth in Section 3.

5 **22.** Neither CBD’s act of entering into this Stipulated Injunction, nor anything contained in
6 this Stipulated Injunction, shall be interpreted as an acknowledgement, endorsement, and/or
7 agreement by CBD that the interim restrictions set forth in Section 3 constitute adequate long
8 term protections to avoid jeopardy to species from pesticide impacts.

9 **23.** Nothing in this Stipulated Injunction shall bar EPA from acting on any matters covered
10 herein in a time frame earlier than required by this Stipulated Injunction, or from taking
11 additional actions not specified herein if EPA determines such actions are appropriate under
12 applicable law.

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

22 **25.** CBD and EPA agree that this Stipulated Injunction was negotiated in good faith and that
23 entry of this Stipulated Injunction constitutes a settlement of claims that were vigorously
24 contested, denied, and disputed by CBD and EPA. By entering into this Stipulated Injunction,
25 CBD and EPA do not waive any claim or defense.

26 **26.** The undersigned representatives of CBD and EPA certify that they are fully authorized
27 by the party (or parties) they represent to agree to the terms and conditions of this Stipulated
28 Injunction and do hereby agree to the terms herein.

1 **27.** Upon entry of this Stipulated Injunction, CBD's Complaint shall be dismissed with
2 prejudice. The dismissal shall apply to and be binding upon CBD and EPA hereto and anyone
3 acting on their behalf, including successors, employees, agents, elected and appointed officers,
4 and assigns. CBD agrees not to bring, assist any other party in bringing, or join EPA or any
5 other party in any court proceeding that concerns an alleged violation of Section 7 of the ESA
6 pertaining to the effects of any of the Pesticides on any of the eleven species identified in
7 Section 3 in the eight Bay Area counties subject to this Stipulated Injunction until after the
8 completion of any Terminating Event for that pesticide as set forth in Section 4 of this
9 Stipulated Injunction.

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

15 **29.** CBD's sole judicial remedy to address the merits of any final action that may ensue from
16 EPA's performance of its obligations under this Stipulated Injunction is to file a separate lawsuit
17 challenging such final action. EPA reserves all defenses to any such suit. Nothing in this
18 Stipulated Injunction alters or affects the standards for review of final EPA action, or creates
19 jurisdiction that otherwise would not exist to review EPA action.

20 **30.** Notwithstanding the dismissal of this action, CBD and EPA have agreed and requested
21 that this Court retain jurisdiction to oversee compliance with the terms of this Stipulated
22 Injunction and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life*
23 *Ins. Co. of America*, 511 U.S. 375 (1994).

24 **31.** The terms of this Stipulated Injunction constitute the entire agreement of CBD and EPA,
25 and no statement, agreement or understanding, oral or written, which is not contained herein,
26 shall be recognized or enforced.
27
28

