

Judge to hear more moth testimony

Ware to decide whether group of citizens can sue federal government

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A U.S. District Court judge in San Jose is scheduled to hear testimony today on whether more than a dozen plaintiffs can sue the state Department of Food and Agriculture in federal court, alleging their civil rights were violated when the state sprayed a pesticide over portions of Santa Cruz and Monterey counties to eradicate the light brown apple moth.

A group of people from Santa Cruz County, including Santa Cruz city councilmen Ed Porter and Tony Madrigal, are contending the state ignored their rights to due process and privacy more than two weeks ago when it sprayed CheckMate LBAM-F from Aptos to Scotts Valley.

The lawsuit also contends that the state violated the constitutional rights of residents in Monterey County, when it carried out a similar aerial application in September with CheckMate OLR-F, shortly after which more than 200 peo-

ple claimed they became ill.

Although Judge James Ware on Nov. 5 denied the group's request for a temporary restraining order to stop the aerial spraying in Santa Cruz County, he set an evidentiary hearing for today at 10 a.m.

Since then, however, the U.S. Attorney General's Office, which is defending the U.S. Department of Agriculture, one of several defendants in the case, has filed a motion to dismiss the case on the basis that it's outside the federal court's jurisdiction.

In court papers filed last week, James A. Scharf, an assistant U.S. attorney general, writes that the plaintiffs should try to resolve their issues in state court, where there are three similar lawsuits pending with respect to the safety of the pair of pesticides and the state's lack of an environmental impact report.

Porter said he hopes Judge Ware doesn't dismiss the case.

"I think when somebody decides to spray me or my property without my consent, there's a fundamental problem

here, and you can find a lot of rights that have been violated, including something along the lines of trespassing," Porter said.

The plaintiffs, who are led by Edna Williams, a north Santa Cruz County resident, have issues with the pesticides because neither have been sprayed on a large scale in an urban setting and there have been no long-term health studies on the effects the spray has on humans.

The state has repeatedly pointed to Australia, where the moth is a native and where a similar pesticide has been sprayed for nearly a decade with no adverse health effects reported. The state Department of Pesticide Regulation last week issued a report saying not enough CheckMate OLR-F was sprayed in Monterey County to cause the sorts of illnesses that were reported between Sept. 9-11, including respiratory problems, itchy skin, sore throats, nausea, muscle aches and fatigue.

The state Department of Food and Agriculture contends that the presence of the

moth is an emergency and that the moths should be eliminated as soon as possible so California's agriculture industry doesn't take a hit.

As much as \$640 million a year in crop losses are estimated, although to date no major crops have been affected by the moth, and only the nursery industry has suffered, according to the Santa Cruz County Agricultural Commissioner's Office.

The state plans to return and spray Santa Cruz County in February. The city of Santa Cruz and the Santa Cruz County Board of Supervisors are trying to stop further spraying, saying an environmental impact report should be conducted first. Both filed lawsuits separately, contending that the California Environmental Quality Act has been violated. The lawsuits eventually are expected to merge, said Porter.

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