

Lawsuit rejected; spraying set to go

Judge: Burden of proof not met

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SAN JOSE — A U.S. District Court judge denied a request Monday for a temporary restraining order to stop the state's aerial spraying of the light brown apple moth, saying he wasn't convinced the pesticide would harm the public.

"Quite frankly, the burden of proof is on you," 9th U.S. District Court Judge James Ware ruled, referring to Santa Cruz County residents Edna Williams and Marilyn Garrett, two of three plaintiffs present in the courtroom. "And I don't think you've done that. I really appreciate the passion both sides bring to the case. If I were convinced, and I haven't been, that this (pesticide) was harmful, I would take a different attitude. I don't feel that I should act on something just because it's being presented to me at the last minute."

"It's unfortunate that this didn't get to me sooner."

Yet Ware set an evidentiary hearing for Nov. 21, saying he didn't want to make a ruling that he would later "regret," something that he said often happens in hearings where such emergency action is requested.

Ware's ruling came after a last-



GARRETT
One of three plaintiffs in the case

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Light brown apple moth spraying

WHERE: Scotts Valley, Santa Cruz, Capitola, Live Oak, Soquel, Aptos, Las Lomas, Aromas, Prunedale and Salinas.

WHEN: 8 p.m. to 5 a.m. this week started in North Monterey County on Monday, and moving north through the week.

WHY: Control breeding of light brown apple moth.

COST: \$2.7 million.

INFORMATION: http://www.aphis.usda.gov/plant_health/ea/downloads/lbam_ea_sc.pdf

SOURCE: California Department of Agriculture.