

# Carbaryl ban 'a landmark decision'

By GUY LASNIER

The decision Friday by Monterey Superior Court Judge Ralph Drummond to ban the use of the pesticide carbaryl in the Felton Gypsy Moth eradication effort ends, for now, the local legal debate on tactics to wipe out the moth.

Spraying from helicopters of the biological agent *Bacillus thuringiensis* (Bt) was scheduled to begin Monday and last for nearly a month. The 250-acre area in downtown Felton slated for spraying will be blanketed six times by air and once from the ground.

San Lorenzo Valley Supervisor Joe Cucchiara hailed Drummond's ruling as "a landmark decision and a victory for the people of Felton."

The use of carbaryl has been stopped by protest and legal action in other states, but never California, Chief Deputy County Counsel Jonathon Wittwer said. Where its use was halted, Bt was used successfully, he said.

Wittwer said he was happy the judge considered evidence of Bt's effectiveness in killing the moth convincing.

The disease Bt attacks gypsy moth caterpillars. The caterpillar, with a voracious appetite for leaves, hatches in late spring.

The County of Santa Cruz, the San Lorenzo Valley Water District, People for a Safe Felton, the Sierra Club and various Felton residents and business owners — 42 plaintiffs in all — filed suit Feb. 25 to compel the state Department of Food and Agriculture (CDFA) to use only Bt. In an arrangement worked out with the attorney general's office and Santa Cruz County Superior Court, the suit was filed to allow time for a hearing prior to the planned start up date of the spray effort.

All parties agreed the program could not be delayed. The eradication program will proceed on schedule, but without the use of ground-sprayed carbaryl on 175 acres within the larger spray area.

The judge's four-page ruling after two-days of courtroom hearings was based on a portion of state Food and Agriculture law. He made no mention of various charges and counter

charges of conflicts of interest, illegal meetings and political pressure made by both sides.

Drummond wrote that state law mandated the CDFA must demonstrate two things before using carbaryl, which is classified as a restricted material. First, it must show "it is reasonably certain that no injury will result," and second, that "no nonrestricted material is equally effective and practical."

The state failed to meet the obligation, he wrote.

Drummond said further, the state "abused its discretion" in choosing carbaryl over Bt. "It is patently unreasonable to choose a known dangerous substance over an apparently benign substance to combat the gypsy moths in the Felton eradication effort."

Assistant Attorney General Charles Getz had argued on behalf of CDFA that the department had the discretion to use the pesticide as it saw fit to act quickly in halting a potential infestation.

Drummond wrote he did not consider various collateral

issues the county raised, "interesting as they may be," because the central issue (the legal standard) was decided.

He did, however, make mention of the question of whether an environmental impact report was required, saying the issue is "substantial and likely to recur."

He said an EIR should be required unless "time is of the essence" so the public may know the effects of an eradication program and what alternatives exist.

"The dissimulation of information in a democracy is an essential attribute of the political process. The people have a right to know," Drummond wrote.

The judge ordered the state to pay the costs of the suit. Wittwer estimated the plaintiff's costs were at least \$1,000 and "possibly five times that much."

The question of attorney's fees was not decided. The plaintiff's attorney's are expected to ask the court to order the state to pay them as well.