

VCF GYPSY MOTH RP 8/3/87

# Appellate court overturns gypsy-moth spray ruling

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A state appellate court last week overturned the decision of a Superior Court judge in 1985 to halt the spraying of an insecticide to kill gypsy moths in Felton.

The Sixth District Court in San Jose ruled Tuesday that the judge "misconstrued" the law and that he should not have halted spraying of carbaryl, a known carcinogen, by the California Department of Food and Agriculture to eradicate an infestation of the tree-eating moths in Felton.

"While this court does not denigrate the serious concerns regarding the application of carbaryl, it cannot be said that it was palpably unreasonable for the CDFA to decide to utilize carbaryl in its 1985 Felton eradication program," the ruling said.

The decision may not effect future eradication efforts since it was not a published legal precedent, and the 1985 spraying program, which did not include carbaryl, has been

completed. But Santa Cruz County won't get \$32,000 in attorney's fees that it was seeking from the state.

The decision reverses the successful challenge in 1985 by Santa Cruz County supervisors and several other local groups contesting plans by state officials to spray carbaryl.

Six moths were found in Felton in late 1984, and the department wanted to act quickly with a spraying program to keep the voracious moths from multiplying.

But when Felton residents found out that carbaryl would be the primary pesticide used in the effort, they protested in court. Carbaryl had been shown to cause cancer and kidney and reproductive disorders in laboratory animals.

The Sierra Club, several downtown Felton business owners, and the San Lorenzo Valley Water District and the city of Santa Cruz, which feared contamination of water

supplies, joined in with the county in the suit to halt the spraying.

A visiting Monterey County judge ruled in March after a two-day hearing that the state could not use carbaryl because it could not be "reasonably certain," as required by law, that it would be safe for people. The judge also said there was a safer and equally effective alternative to carbaryl.

The state was barred from using carbaryl without more environmental studies and was ordered by Judge Ralph Drummond to use instead a bacterium called *Bacillus thuringiensis*, more commonly known as Bt. Bt was sprayed and two years later the gypsy moth has been declared eradicated from Felton.

The state challenged Drummond's decision in May.