

State will appeal spraying decision

Ban order to stand pending ruling

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FELTON — The state apparently will appeal a Superior Court Judge's decision to stop carbaryl spraying Monday in Felton to fight against the gypsy moth.

County attorneys, meanwhile, have already insured that despite the appeal by the California Department of Food and Agriculture, Visiting Santa Cruz County Superior Court Judge Ralph Drummond's no-carbaryl ruling will stand until a subsequent ruling is made in court.

Drummond signed a separate order Friday afternoon — an order County Counsel Dwight Herr said insures Drummond's ruling "could not be put on the shelf" until an appeal hearing is heard.

Without that order, it was possible the state might have gotten a judge to block Drummond's ruling and allow for the scheduled carbaryl spraying to take place, said Herr.

Deputy Attorney General Charles Getz told The Sentinel that the state has "tentatively decided" to seek an emergency writ from the Court of Appeals in San Jose as soon as possible.

"We have the greatest respect for Judge Drummond, but we just don't think he has the ability to order the state not to use carbaryl," Getz said. "We feel he has gone a bit too far in saying the only eradication method is *Bacillus thuringiensis*."

Getz said they tentatively plan to file the appeal Monday or Tuesday. He said they also have the option of accepting Drummond's direction, "but we feel very strongly that the director (of the California Department of Food and Agriculture) ought to have the chance to make the decision as to what is sprayed."

Getz added that all state spray plans have been postponed — even those that called for aerial application of B.t. beginning next Saturday. He said the latest the state can wait without spraying anything is March 25.

The California Department of Food and Agriculture had its spray rigs and crews ready to begin ground spraying carbaryl over 175 acres around downtown Felton on Monday morning. Notices had already been sent to residents.

Fifth (San Lorenzo-Scotts Valley) District Supervisor Joe Cucchiara lauded Drummond's ruling as "a landmark decision." Victor Sher, an attorney for co-plaintiffs People for a Safe Felton and the

Valley Women's Club, called it "vindication."

The judge ruled the state had not met the requirement to be "reasonably certain" that no injury would result from carbaryl, or that a non-restricted material might be as effective and as practical. Instead, he ordered the use of the non-chemical B.t.

This marked the first time the state, after numerous challenges in court regarding carbaryl spraying, had been overruled by a local authority.

Meanwhile, Felton residents are practically dancing in the streets — and it's not because of St. Patrick's Day. Downtown residents and business owners are elated at the turn of events.

"It's hard to tell whether I'm happier because they're not using carbaryl or the fact that the state had to eat their words," said Larry McNeill, owner of White Raven Bookstore.

Added Linda Bartlett, a resident and member of People for a Safe Felton: "The people of Felton beat the big, bad state against all odds. It definitely shows me never to have a defeatist attitude. It renews my faith in the system."

Don Haslam, one of the owners of People's Natural Food Store, said their business was bound to lose at least \$10,000-a-month from the carbaryl spraying.

"That's what we lost during the Medfly spraying (of malathion) in 1981," he said. "We had dozens of customers tell us they wouldn't shop here if carbaryl was sprayed. Can you imagine going to a food store to buy organic produce and having to walk or drive through a pesticide application area?"

Haslam said plans of "civil disobedience" had been in the works were the state granted permission to spray Monday.

"We were going to form a line in front of houses and tell them they weren't going to spray us," he said. "There was talk of anywhere from 20 to 60 people, all willing to go to jail over this issue."

One dead egg mass and six gypsy moths were trapped in downtown Felton last summer. The caterpillars, which begin hatching this month, can cause widespread defoliation of forested areas.

The state declared an "infestation" and ordered the two-prong spray program. The state has argued all along that B.t. alone is not a proven eradicator. The county maintains that carbaryl should not be used until it is proved safe.