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Court Ruling Backs Right-To-Farm Law; Appeal Pending

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By Ray Sotero*

Recent results in a little-publicized water war in Santa Cruz County promise to bolster California's right-to-farm law, growers on the winning side said last week.

Losers, however, believe the Nov. 30 decision by Superior Court Judge Robert Yonts is an unfair expansion of farmers' rights because it's too liberal in allowing recent developments in farming practices. Those include changes to less absorbent crops and cultivation practices, the use of laser-aided leveling of farmland and installation of more efficient water-drainage systems.

"(The law) was intended to protect agricultural activities that preexisted a residential development," Watsonville attorney William Adams said. "In this case, the allegation addressed a change that occurred (afterward). This case presents an interesting expansion of the existing statutes."

Farmers'-rights advocates disagreed, saying the activities by the dozen farmers originally sued did not contribute significantly to flooding of encroaching subdivisions, and the farmers are innocent of any wrongdoing because they had been obeying the law.

"This was a great ruling because so often agriculture is blamed for situations that they didn't have a part of," Santa Cruz County Farm Bureau executive director Jess Brown said. "In this case, the city claimed the flooding of a (nearby) housing development occurred because the water came off an ag field. The judge ruled that ag didn't change; the city changed, and it's through that change that this flooding occurred."

For their part, Watsonville officials said they fear for the future of the Golden State's \$27 billion agriculture industry because of what they see as a misguided interpretation of the 1982 law and too little cooperation from farmers especially in increasingly urbanized areas, city attorney Al Smith said. Adams, of San Jose, whom the city hired to argue the case, agreed.

For example, the two lawyers said Watsonville has spent \$1.3 million in the past three years installing pumps than can handle inflows of up to 45,000 gallons per minute. But city officials said they received mixed support from farmers when asked to devote 1 percent of their land toward development of low earthen berms to help divert and slow rain runoff.

Watsonville officials believe that many changes in farming practices occurred around 1990, or about 15 years after much of the nearby residential construction. Severe flooding didn't take

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place until about 1995. Changes they cited included fewer orchards like apples, which tend to absorb rainfall, and more row crops like strawberries, where there is greater runoff.

This, combined with laser-aided leveling of land, construction of greenhouses and more efficient grower-installed drainage systems, has played a costly role in 13 floods in the past three years, mostly to two subdivisions at the southeast region of Watsonville, Smith said.

The result: Overall combined runoff from the 430 acres originally involved in the suit average about 65 percent that traditionally can be expected from farmland, Adams said, citing an engineering study.

Smith said city officials have not decided whether to appeal Yonts' ruling; they face a mid-February deadline. "No one's saying they should not be farmers, but we all live in same community, and they need to say something other than, 'It's your problem: we're farmers.'"

To James Nagamine, a farmer of strawberries and nursery plants adjacent to a 73-acre parcel blamed for much of the flooding, the issue underscores the value of an early 1980s state law geared to protect farming operations when certain requirements are met. Nagamine also said the city didn't plan for adequate drainage for the site when it became actively farmed recently after years of dormancy, during which it acted as a water-retention pond. It is that change that spurred most of the increased runoff into housing built in nearby flood plains, said Nagamine, a member of the county Farm Bureau board.

"Everybody says you can't fight city hall, but if city hall wants to take 1 to 10 percent of your land without compensation you have to fight back," Nagamine said, referring to land the city wanted for a berm plus any area that's flooded. "In this case city hall is trying to alleviate their responsibility by pushing it on to farmers."

The controversy came to a boil when the city of Watsonville sued the farmers and charged them with farming practices that contributed to severe flooding beginning in 1995. Specifically, the suit asked the court to issue injunctions requiring farmers to make changes along the perimeters on their land to reduce runoff. The city also sought up to \$7,000 from farmers for each flood event as compensation, records show.

Yonts, however, in his ruling on the civil suit said the farmers were not to blame for the flooding because they had not substantially changed their practices for decades. A couple family operations dated to the late 1800s.

Ironically, about half the farmers initially sued have reached settlements with the city, including Coastal Berry, which is leasing the 73-acre site next to Nagamine. These growers are in the process of installing the berms and diversions the city requested.

Asked about the value of those changes if the remaining farmers affected by Yonts' decision do nothing, Adams said: "There still is an increase in protection. We're hopeful that the results will be reduced flow." Time will tell if the slowdown will improve drainage, he added.

In any case, it wasn't until the city allowed suburbs to encroach on existing farming operations in the 1960s and 1970s that flooding became an issue, the farmers argued through their attorney, T.R. Sugano of Sacramento.

"It's a preexisting agricultural use of the land, and the ag use is supposed to prevail," Sugano said. "The judge found the law applied in this situation."

Simply put, farmers have the right to continue their agricultural practices as long as those practices essentially follow past practice and they have followed state law in caring for the land and crops, in the view of Franklin Adams, executive vice president of CalFarm Insurance Co. Many of the farmers were insured by CalFarm.

He said the decision reinforces statutes protecting farmers from urban encroachment, and is especially necessary as fewer and fewer residents understand the role agriculture plays in providing food and fiber.

"The public at large thinks of ag differently and thinks as long as they have a (supermarket) down the street that they'll have plenty of food on the table," he said. "That is why we have the right-to-farm law in California."