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Failed City Lawsuit Against Farmers Draws Reaction; Officials, growers have mixed feelings

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WATSONVILLE Local farmers and city officials who faced off in a recent lawsuit over flooding are both considering the decision a victory, though no reward was given, no responsibility claimed and no solution has been determined to the original conflict.

Farmers of more than 430 acres in the southeast end of Watsonville were vindicated last week when Santa Cruz County Superior Court Judge Robert Yonts ruled they were not to blame for increased flooding that in 1995 caused damage to the Pajaro and Bay Village areas.

Yonts ruled that farmers are not to blame for flooding problems when they haven't changed their general practices, giving a victory to local growers who were tagged by city officials as the culprits for causing floods in 1995.

Settlements were also reached a week prior to the ruling, between the city and the Franich and Harrison families, coastal Berry Co., Burgstrom/Vilhauer, and C&V Farms.

Richard Timan, the attorney for Coastal Berry, Franich and Harrison, said that according to the settlement agreements, no money will be paid to the city but farmers will change some of their operations, such as drainage patterns.

Though he said his clients were victorious, Timan thought the lawsuit was a "bust," and a waste of time and money.

"This case is a bust the city got creamed," he said "I think they wasted...at least \$100,000 in legal fees, for nothing."

Watsonville City Attorney Alan Smith said he didn't think the suit came as a surprise to any of the defendants, because the city had been "sending numerous letters" to farmers asking them to hold their water back during peak flows.

It was a surprise to Coastal Berry co., Timan said, adding that the company had already agreed before it was aware of the lawsuit filed last march - to make some operational changes to help reduce runoff by installing retention ponds that would catch some of the water.

However, when he and company leaders caught wind of a lawsuit, he said, they halted their construction and decided to wait and see how the case would pan out.

"The city asked us to take measures and we said `OK' and started doing all those things." Timan said. "We were doing what they were asking,... and then they sued us."

Korshak, Kracoff, Kong & Sugano, L.L.P.

"We were always totally mystified by the lawsuit," he said. "What Coastal Berry is agreeing to do now, it would've done months ago."

The city has 60 days to appeal the decision, but no decision can be made until the city council meets Dec. 8.

"Until we have a city council meeting, I don't know what's going to happen," Smith said.

Timan said that the company's settlement with the city was an agreement to "change drainage patterns," including the construction of those retention ponds.

Floods were primarily due to the reawakening of the land on the Franich and Harrison properties after the land was dormant for years without any cultivation cultivating it for agricultural use required growers to build a ditch and level the field, spurring water runoff.

City officials claimed that changes in farming practices had resulted in increased flooding in 1995 according to the suit, recent changes in land grading, crops, farming methods and drainage channels have all resulted in significant increase in the amount of flow rates during storms.

Yonts ruled, however, that the farmers being sued hadn't really changed any of their general operating practices, and so flooding couldn't be blamed on them.

Dick Peixoto of Peixoto farms, one of the defendants in the case, said Monday the ruling, made Nov. 24, was a fair one in that farmers shouldn't be to blame for the floods.

City officials, however, felt otherwise.

"The primary goal for this lawsuit has always been to eliminate flooding; therefore, we are hopeful that the remaining property owners will also agree to cooperate with the city," said Watsonville Vice Mayor Betty Bobeda, whose district includes the area that suffered from floods, in a press release issued by the city clerk Monday.

Bobeda added that she was "disappointed," the city lost the suit and said city council members will review their legal alternatives "in the very near future" at its next meeting.

In the suit, the city requested that preliminary and permanent injunctions be issued that would require farmers to modify their properties and general practices. They also sought a fiscal compensation in the amount of \$5,000 to \$7,000 per flooding event.

Though Bobeda expressed hope for a floodless winter, she said the challenge would be finding an opportunity to have good weather for farmers to actually establish some changes in their landscaping and/or drainage systems.

"The biggest obstacle in moving ahead with the construction of improvements at this date is the weather," she said. "Hopefully there will be a break in the weather to allow the soil to dry out enough for the necessary earth moving operations."

The city was represented by attorney Bill Adams of the Berliner & Cohen law firm in San Jose.