

# Buffer war impact

## Key Points

- Trend is to call in lawyers and legislators before seeking a compromise in conflict.
- Beekeepers are protected by right-to-farm legislation.
- Beekeepers also have several potential tort claims.

By ERIC McMULLIN

**D**OMESTICATED bees from commercial hives are essential to more than 90 varieties of fruits and vegetables grown in California. While citrus crops don't require bees to produce fruit, they are handy feeding grounds that maintain bees when other crops are not flowering. In addition, many beekeepers produce and sell citrus-flavored honey.

However, there is one citrus crop where honeybees are not welcome: seedless mandarins. Bees cause the fruit to develop seeds.

Seedless mandarins are in high demand from consumers, and bees are known to fly up to two miles; hence, a two-mile no-bee fly-zone idea was born.

At this point, the two sides of this idea are entrenched in their positions. But given human nature and the stakes involved, a solution seems inevitable.

Meanwhile, the battle threatens to spill over to other parts of agriculture. Everyone involved is trying to avoid this, but the future doesn't look good.

"It appears that political gammanship is taking place with regards to A.B. 771," says Gene Brandi, state beekeeper legislative chairman. "It would set up a Citrus Advisory Committee to advise the secretary of agriculture on citrus matters. It is conceivable that they would recommend that bees not be allowed where mandarins are grown."

There seems to be a trend toward calling in the lawyers and legislators first, and compromising second.

For example, organic growers are already asking the California Legislature for the right to sue conventional farmers if genetically engineered traits get into their crop. And because of *E. coli* fears, Fresh Express won't buy vegetables if they're within one mile of a cattle feedlot or dairy operation, or if they're within several hundred feet of cattle pasture.

## The law

Farmers do have significant protection, including state and federal right-to-farm laws. The weight of the law favors those who were in the area first, says Susan Mulligan, a law student studying the legal aspects of the issue and the wife of Shafter beekeeper Mike Mulligan.

Beekeepers, for example, are explic-



**ORANGE BLOSSOM:** Honey produced at Mike and Susan Mulligan's Glory Bee Co., San Joaquin Valley, depends on bee access to citrus orchards.



**CITRUS LAW:** Assembly Bill 771 could allow the secretary of agriculture to promulgate regulations prohibiting honeybees from certain varieties of citrus, like these seedless mandarins.

itly protected in California's right-to-farm legislation, Susan Mulligan says, adding that beekeepers also have several potential tort claims.

"There is protection against interference with contract, for example," she says. "A third party can be sued if it interferes with existing contracts, and many of the contracts between beekeepers and landowners go back several decades. Also, a third party can

be sued for interfering with an advantageous business relationship.

"And there are prohibitions against unfair business practices," Mulligan adds. "Paramount Citrus, for example, is allowed to protect its interests. But if it comes in like the 900-pound gorilla, with its in-house counsel and lobbyists, and attempts to bully the smaller beekeepers, at some point that may cross into an unfair business practice."

Also, there is a longstanding tradition in agriculture of neighbors working together and not interfering with each other's affairs.

"This is a personal opinion more than a professional one, but if someone moves into an area and tells a neighbor what he or she can't do, I consider that what the legal system calls a 'taking,'" says Patricia Stever, executive director of the Tulare County Farm Bureau.

## A bother

That jibes with the legal precedent known as "coming to the nuisance," says Joe Traynor, president of Scientific Ag in Bakersfield and a broker of bee services.

"For example, if a dairy has been in an area for years and someone moves in next door, then complains about the smell and the flies, the dairy can argue that the newcomer should have been aware of the characteristics of living next to a dairy," Traynor explains.

However, that protection isn't as absolute as it once was. "That's now just one aspect the court will consider," says Mulligan. And no one knows which way a court will rule on potential tort claims, she acknowledges.

Still, ag will survive. The sun will shine, the rain will fall, and the adversaries will fight their battle until a solution is reached for the conflict between mandarin growers and beekeepers.

## News Net Briefs

### USDA rules that almonds must be pasteurized

All California almonds will have to comply with strict new pasteurization regulations, implemented by USDA in response to salmonella outbreaks. Mandatory compliance is set for Sept. 1, 2007. The ruling is a result of a voluntary "Action Plan" proposed by the Almond Board of California.

### New test checks authenticity of organic produce

The supermarket sign says "organic," but is it mislabeled? The *Journal of Agricultural and Food Chemistry* reports that United Kingdom scientists have a new test that checks for the amount of a form of nitrogen. Researchers found differences in the nitrogen isotope composition of tomatoes, lettuce and carrots grown organically vs. conventionally.

### Box wine popularity rises

Box wine is becoming increasingly popular with both young drinkers and baby boomers looking to enjoy a single glass in a cool, unpretentious way, reports the *Contra Costa Times*. Volume of 3-liter box wine grew 44% last year, compared with a 3% gain in volume of overall table wine, according to ACNielsen.

### California senator pushes cloned labeling legislation

California state Sen. Carole Migden has unveiled legislation that would require the clear labeling of meat and milk from cloned animals. Senate Bill 63 was due to receive its first legislative hearing in the Senate Health Committee. At press time, there had been no further developments resulting from the hearing.

### Farm Credit System provides results for first quarter

The Farm Credit System reported combined net income of \$654 million for the quarter ending March 31, 2007, compared with \$554 million for the same period last year. The system had average earning assets of \$160.3 billion during the first quarter, \$23.8 billion higher than the year before.

### Fruits, veggies fight cancer

Vitamins and antioxidants in fruits and vegetables can help prevent and slow the development of multiple kinds of cancer, reports *The Dallas Morning News*. About one-third of cancer deaths might be related to nutrition, according to the U.S. Department of Health and Human Services and the American Cancer Society.

### FDA reviews laser that could replace sticker on produce

Georgia-based Durand-Wayland Inc. has developed a laser that can etch information onto produce in lieu of the usual sticker, reports the Produce Marketing Association. The Food and Drug Administration has designated the process for expedited review because it believes the laser could significantly aid the tracking of a foodborne disease, an FDA representative says.

## State must act on mass bee deaths

**C**ALIFORNIA-BASED Self Insured Solutions, which manages four successful agricultural self-insured workers' comp groups, has called on California to quickly find answers to the sudden and unexplained mass bee deaths that are threatening \$6 billion worth of grown-in-California agriculture, reports Joe Wheeler, Self Insured Solutions vice president.

"Year 2007 could be an economic disaster for California growers unless the problem is identified — and solutions found — immediately," says Wheeler, who runs the crop loss division. "That's why we've called on Sacramento to act. Washington moves too slowly."