

HONEYBEE NICE TO YOUR NEIGHBORS: SOLUTIONS TO THE DISPUTE BETWEEN BEEKEEPERS AND CITRUS GROWERS IN CALIFORNIA'S SAN JOAQUIN VALLEY

I. INTRODUCTION

In 2006 in California's Tulare County, a dispute arose between Paramount Citrus and local beekeepers relating to a seedless variety of mandarin, the W. Murcott, which becomes seeded when cross-pollination with other citrus varieties occurs.¹ Paramount Citrus threatened to sue the local beekeepers if they did not keep their honeybees at least two miles from the seedless mandarin crop, claiming the seediness occurred as a result of honeybee pollination.² The legal theories of the threatened suit would have been trespass, based on unlawful entry by the honeybees, and nuisance, based on the interference with the use and enjoyment of land.³ Although Paramount Citrus planted the mandarins in a citrus area where honeybees had been used as a method of pollination for decades, it expected recompense for the lost profits from its seeded mandarins, which receive a lower price at market than seedless mandarins.⁴ Currently, it appears Paramount Citrus has decided that legislative rather than judicial action would be effective to impose limitations on beekeepers.⁵

This Comment examines the law of trespass, nuisance, right-to-farm statutes, and apiary protection statutes as they relate to this dispute, concluding Tulare County beekeepers are likely to prevail if any judicial ac-

¹ Dennis Pollock, *Plight of the Honeybees*, FRESNO BEE, May 10, 2006 at C1-C2.

² *Id.*

³ *Id.*

⁴ Dennis Pollock, *The Fruit and the Bees*, FRESNO BEE, Sept. 27, 2007, available at <http://www.fresnobee.com/business/story/149619.html> (indicating that seeded mandarins sell for one-quarter of the price that seedless mandarins sell for).

⁵ See generally Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: July 12, 2007, available at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070712_amended_sen_v93.pdf.

tion proceeds. This Comment further examines the impact of Assembly Bill 771, which has recently added sections to the California Food and Agriculture Code for resolution of this dispute and regulatory protection for growers, such as Paramount Citrus, if this dispute cannot be resolved.

II. THE PLIGHT OF THE W. MURCOTT MANDARIN, FROM SEEDED TO SEEDLESS

The primary problem with the W. Murcott variety of mandarin is the presence of seeds in the fruit caused by cross-pollination with other citrus varieties such as other mandarins, tangelos, and oranges.⁶ Research has shown that the W. Murcott can contain seeds if planted within a five-mile radius from seed-bearing citrus due to honeybees causing cross-pollination.⁷ Although honeybees are helpful to increase the number and size of citrus, they are unnecessary to cause fruit production because citrus are self-fruitful and only require one plant to produce fruit.⁸ Studies performed as long ago as 1953 tested the effectiveness of pollination for several varieties of citrus, including one study of the California Clementine variety of mandarin.⁹ All varieties of pollen used actually improved the Clementine fruit set and increased fruit size as an additional advantage derived from cross-pollination.¹⁰ However, the study revealed that the primary disadvantage of the increase in fruit set from cross-pollination was the similar increase in the number of seeds in the fruit.¹¹

Honeybees are the dominant pollinator of citrus varieties and are very common during the mandarin bloom period in California.¹² A grower

⁶ Ricardo Duran, U. CAL. NEWS WIRE, *UCR Scientists Develop New, Seedless, Mandarin Orange*, June 7, 2006, available at <http://www.universityofcalifornia.edu/news/article/8234>.

⁷ Leslie Berkman, INLAND SOUTHERN CALIFORNIA BUSINESS NEWS, *Ready to Taste Tangos*, June 17, 2006, available at http://www.pe.com/business/local/stories/PE_Biz_D_tango18.8b47f8.html.

⁸ John Davis, John Braswell & Freddie Rasberry, MISS. ST. UNIVERSITY EXTENSION SERVICE, *Fruit and Nut Review*, available at <http://msucares.com/pubs/publications/p1779.htm> (last modified Mar. 29, 2004).

⁹ R.K. SOOST, PROC. OF THE AM. SOC'Y FOR HORTICULTURAL SCI., *Unfruitfulness in the Clementine Mandarin*, Volume 67 at pages 171, 174 (1956).

¹⁰ *Id.* at 174.

¹¹ *Id.* at 174.

¹² Tracy L. Kahn & C. Thomas Chac, U. CAL. RIVERSIDE DEP'T OF BOTANY AND PLANT SCI., *Mysteries of Mandarins: Sex, Seedlessness, and New Varieties* p. 2 (Oct. 2004), available at <http://ucce.ucdavis.edu/files/filelibrary/2017/16892.pdf>.

must use care in selecting a site to plant “self-incompatible”¹³ varieties of mandarins, such as Clementines, which should be isolated from other citrus varieties to prevent seed production.¹⁴ To prevent seeds, a grower could plant a very large solid block of one variety, isolating the mandarins to prevent cross-pollination.¹⁵ A grower could also plant buffer rows to surround the mandarins with citrus varieties, such as Satsuma mandarins or Navel oranges, which lack functional pollen.¹⁶

As recently as 2003, experiments were conducted by the University of California, Riverside, using California mandarin orchards. These experiments revealed that the previous recommendation of five to twenty buffer rows was insufficient to prevent seediness,¹⁷ but more than 116 buffer rows are required to avoid cross-pollination and ensure production of seedless mandarins.¹⁸ Even more space is required between compatible varieties to avoid cross-pollination.¹⁹

In the last five years there has been an influx in plantings of mandarins and mandarin hybrids,²⁰ most of which have been planted in Tulare and Kern Counties.²¹ The Clementine mandarin has increased in popularity because of its skin and flavor qualities.²² Initial plantings of Clementines in the San Joaquin Valley included at least two varieties in the same block to further pollination.²³ However, it not only increased the yield, it also produced excessive seeds.²⁴

¹³ *Id.* (Varieties that can be planted next to each other and pollinated only by the same variety without fertilization occurring, therefore not producing seeds, are described as “self-incompatible.”) *Id.*

¹⁴ *Id.* (Self-incompatibility can be genetically controlled and is specific to various mandarin varieties such as W. Murcott, where pollination between the flowers of the self-incompatible varieties will not produce a fertilization result, resulting in seedlessness. However, if the self-incompatible varieties are grown in an area near other varieties, seeds will result. It is difficult to isolate these self-incompatible varieties in California where there are many crops that require pollination by bees to produce seeds and set fruit.) *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2-3.

²¹ *Id.* at 3.

²² Joe Traynor, *Mandarin Dilemma*, CALIFORNIA FARMER, June 2003, available at <http://www.beesource.com/pov/traynor/cfjune2003.htm>.

²³ *Id.*

²⁴ *Id.*

Paramount Citrus is currently the largest grower of Clementine mandarins in the United States.²⁵ Paramount Citrus owns and farms approximately 30,000 acres of citrus in the San Joaquin Valley and Ventura County.²⁶ There are approximately 25,000 acres of mandarins planted in California.²⁷ Depending on the size of the mandarin plantings, keeping honeybees away from the mandarins could potentially exclude honeybees from the San Joaquin Valley's citrus acreage completely.²⁸ This would result in the prohibition of honeybees where they have been used for pollinating other crops for decades.

Paramount Citrus began its mandarin planting program of Clementines in 2000, which it began selling in 2004.²⁹ Paramount Citrus' farming operation is constantly in the field checking the interior and exterior of its fruit.³⁰ It is difficult to imagine the presence of seeds in mandarin plantings owned and farmed by Paramount Citrus was overlooked prior to beekeepers being threatened with lawsuits in 2006. It is even more difficult to imagine that Paramount Citrus could not reasonably have known that cross-pollination would be a problem when planting mandarins in the San Joaquin Valley, where many different varieties of citrus have been grown for decades.

III. STATUTORY PROTECTION OF THE APIARY INDUSTRY

Protection of the apiary industry is important to the economy and welfare of Californians, as codified in California Food & Agriculture Code

²⁵ *US: Mad for Mandarins*, FRESH PLAZA, available at http://www.fresh-plaza.com/2006/26jan/2_us_mandarins.htm (last visited Feb. 16, 2008). (California Citrus Acreage Report indicates that of the roughly 18,000 acres of mandarins in the state, more than half have been planted since 1999, most of them in the San Joaquin Valley. Two large growers, Sun Pacific and Paramount Citrus, have each planted roughly 3,000 acres of Clementines in the Central Valley).

²⁶ *Last Paramount Citrus Rep leaves Sunkist Board*, VALLEY VOICE NEWSPAPER, Apr. 8, 2006, available at <http://www.valleyvoicenewspaper.com/vvarc/2006/april182006.htm>. (Paramount Citrus owners, Stewart and Lynda Resnick, also own Teleflora, Franklin Mint, Paramount Farming, Suterra, POM Wonderful, and Fiji Water.) See Joe Traynor, *Taking On The Resnicks: An Introduction To The Owners Of Paramount Citrus*, BEE CULTURE, Oct. 2006, available at <http://www.beesource.com/pov/traynor/resnicks.htm> (last visited Feb. 16, 2008).

²⁷ Eric C. Mussen, *Honey Bees in California* 9, TOPICS IN SUBTROPICS NEWSLETTER (U. CAL. DAVIS COOP. EXTENSION, DAVIS, CAL.) Apr.—June 2007, available at http://cetulare.ucdavis.edu/newsletterfiles/Topics_In_Subtropics12041.pdf.

²⁸ *Id.*

²⁹ ParamountCitrus.com, Company Info, http://www.paramountcitrus.com/company_info/history.html (last visited Feb. 16, 2008).

³⁰ ParamountCitrus.com, Grove to Store, http://www.paramountcitrus.com/grove_to_the_store/harvesting.html (last visited Feb. 16, 2008).

section 29000,³¹ which endeavors to promote and protect a vibrant and healthy apiary industry.³² This section is known as the “Apiary Protection Act.”³³ The California legislature determined that the service honeybees perform is valuable to agriculture in this state³⁴ and declared certain pesticides to be potentially hazardous to honeybees when applied to blossoming plants.³⁵ Although the legislature recognized the need for pesticides to protect agricultural crops,³⁶ it balanced this need with the potential harm to honeybees from agricultural pesticide use.³⁷ Forcing beekeepers to move their hives from long established locations would devastate the California apiary industry and its production of citrus honey, which is the main source of a beekeeper’s livelihood.³⁸

IV. THE CITRUS/HONEYBEE PROTECTION: WHY HONEYBEES ARE ALLOWED TO TRESPASS

Honeybees are the primary source of pollination for one-quarter of all crops grown in the United States,³⁹ including almonds, avocados, apricots, cherries, pears, apples and oranges.⁴⁰ Other crops also need honeybees for the purpose of pollination.⁴¹ Due to the importance of honeybees to crop production, Fresno, Kern, and Tulare Counties have designated a citrus/honeybee protection zone extending one mile from citrus plantings.⁴² This protection from pesticide use extends from the time when ten percent of all citrus blooms are open until seventy-five percent of the blossoms have fallen from the north side of the citrus trees, which is designated “petal fall.”⁴³

³¹ CAL. FOOD AND AGRIC. CODE § 29000 (Deering 2007).

³² *Id.*

³³ CAL. FOOD AND AGRIC. CODE § 29001 (Deering 2007).

³⁴ CAL. FOOD AND AGRIC. CODE § 29100 (a)—(d) (Deering 2007).

³⁵ *Id.* at (b).

³⁶ *Id.* at (c).

³⁷ *Id.* at (d).

³⁸ Traynor, *Mandarin Dilemma*, *supra* note 22.

³⁹ *Honey Bee*, MICROSOFT ENCARTA ONLINE ENCYCLOPEDIA, 2007, available at http://www.everythingabout.net/articles/biology/animals/arthropods/insects/bees/honey_bee/ (last visited Feb. 16, 2008).

⁴⁰ *Id.*

⁴¹ Pollock, *supra* note 1, at C2. (During citrus bloom, growers of crops such as avocados and kiwifruit need bees for the purpose of pollinating those crops.)

⁴² CAL. CODE REGS. tit. 3, § 6656(a) (2008); *see also* CAL. FOOD AND AGRIC. CODE § 29100 (Deering 2007).

⁴³ CAL. CODE REGS. tit. 3, § 6656(b), (i)(2) (2008).

The County Agricultural Commissioner gives public notice of the dates relating to the bloom period in each district where citrus is grown.⁴⁴ When this protection period ends, pesticides can be applied within forty-eight hours without the need to notify beekeepers.⁴⁵ This protection allows honeybees to roam without threat from neighboring growers until petal fall is declared by the County Agricultural Commissioner.⁴⁶

V. HONEYBEES – RIGHTS OF LANDOWNERS

The animal kingdom is divided into two classes: domesticated and wild.⁴⁷ Wild animals are typically divided into two classes – those that are free to roam and those that have been taken under man’s dominion.⁴⁸ When hived by a person and reclaimed, bees wild by nature can be subjected to ownership.⁴⁹ However, honeybees typically swarm and are free to roam.⁵⁰

Historically, honeybees have not been held to be trespassers.⁵¹ However, the owner of land may prevent others from trespassing to take the wild animals on his or her property, and also has the right to capture a swarm of bees and hive them.⁵² Typical actions against beekeepers involve injury arising from stinging, which require the injured party to prove not only that the bees were vicious, but that the beekeeper knew of their viciousness,⁵³ since the beekeeper has complete control in the placement of hives.⁵⁴ A beekeeper may be found negligent if he or she places the hives where injury by the bees might reasonably be expected to occur.⁵⁵ Placement of hives on a lot line has been held to be an impru-

⁴⁴ See *id.* § 6656(b).

⁴⁵ See *id.* § 6656(c).

⁴⁶ See *id.* § 6656; see also Letter from Joel Nelsen, President, California Citrus Mutual, to EPA on Carbaryl Use, Citrus, and Bees (Aug. 5, 2003) available at <http://www.wrpmc.ucdavis.edu/newsalerts/carbarylbees.html>.

⁴⁷ Dana Stahlman, *Intermediate Beekeeping, Lesson Six, Bee Laws, Go Beekeeping*, available at <http://www.gobeekeeping.com/LL%20lesson%20six.htm> (last modified Mar. 2, 2005).

⁴⁸ *Id.*

⁴⁹ A.I. Root, *Laws Relating to Bees*, 1920, available at <http://www.beesource.com/eob/laws/rootlaw.htm>.

⁵⁰ Stahlman, *supra* note 47.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

dent location if done at a certain time or in a certain manner where injury by the bees is likely to occur.⁵⁶

In *Bennett v. Larsen Co.*, the court stated that trespass is an inappropriate action for harm caused by honeybees, which are foragers by nature.⁵⁷ Conversely, landowners are under no duty to protect the honeybees, except that he or she cannot destroy them by intentional or wanton means.⁵⁸ Negligence for destruction of honeybees was discussed in *Lenk v. Spezia*, where the court held that when dangerous pesticides are sprayed negligently, the sprayer can be held liable for damage to others arising from such negligence, or for any pesticide drift, but owe no duty to owners of the honeybees that enter the sprayed property and come into contact with the dangerous pesticide in that manner.⁵⁹

VI. LEGAL REMEDIES

A. Trespass

Trespass is an entry, without consent, on the property in the exclusive possession of another.⁶⁰ There is no liability for trespass unless it is intentional, the result of recklessness or negligence, or the result of injuries in an ultrahazardous activity.⁶¹ At common law, there is no duty to fence land to prevent entry of livestock, but each owner has a duty to restrain his or her own livestock and is answerable for any trespass on the property of another.⁶² Generally, under the law of trespass, it is unlawful to throw a foreign substance upon another's property, and in so doing, to interfere with the enjoyment of property.⁶³ In cases where spray drift is an issue, it is of no consequence whether the spray is toxic because even a non-toxic, relatively harmless intrusion amounts to trespass.⁶⁴

⁵⁶ *Id.* (With the scientific advances of today, identifying the hive that a bee came from is possible by taking the DNA from the bee's stinger and matching it with the ones in the hive). *Id.*

⁵⁷ *Bennett v. Larsen Co.*, 118 Wis. 2d 681, 691 n.3 (1984).

⁵⁸ *Id.*

⁵⁹ *Lenk v. Spezia*, 95 Cal. App. 2d 296, 302—303 (1949).

⁶⁰ *Wilson v. Interlake Steel Co.*, 32 Cal. 3d 229, 233 (1982); *MacLeod v. Fox W. Coast Theatres Corp.*, 10 Cal. 2d 383, 387 (1937).

⁶¹ *Smith v. Lockheed Propulsion Co.*, 247 Cal. App. 2d 774, 784 (1967).

⁶² *Meade v. Watson*, 67 Cal. 591, 593 (1885); *see also Blevins v. Mullally*, 22 Cal. App. 519, 524 (1913).

⁶³ RESTATEMENT (SECOND) OF TORTS § 158 cmt. i, illus. 4 (1965); *see also* Elizabeth Brubaker, *Property Rights in the Defence of Nature*, Appendix A, Trespass Case Summaries, 1978, available at <http://www.environmentprobe.org/enviroprobe/pridon/appenda.html> (last visited Feb. 16, 2008) [hereinafter Brubaker Appendix A].

⁶⁴ Brubaker Appendix A, *supra* note 63.

Historically, trespass was used to help people combat environmental problems ranging from stray cattle to seeping privies.⁶⁵ Trespasses that do not cause damage are still unlawful⁶⁶ because the law regards trespass as an intrusion upon a person's right to exclusive possession of land.⁶⁷ A person may be liable for trespass for simply bruising grass or walking on the dirt, despite a lack of damage.⁶⁸

In *Sammons v. City of Gloversville*, a New York court issued an injunction against a town's sewage disposal practices.⁶⁹ The town had trespassed against the farmer by emptying sewers into a creek that flowed through a farmer's land, causing filth to accumulate on the creek's bed and along its banks.⁷⁰ This violation of the farmer's property rights could not be permitted, regardless of the public necessity of the sewage works or the great inconvenience that could result from shutting it down.⁷¹

Lenk v. Spezia and subsequent cases have rejected trespass as applied to honeybees due to the difficulties that would arise in attempting to stop honeybees from entering property, since trespass traditionally required the assertion that a trespasser can be prevented from entering the property because intentional, uninvited entry is trespass.⁷² Although Paramount Citrus has claimed that honeybees are trespassing in their mandarin plantings, it cannot reasonably expect a honeybee to read a "No Trespassing" sign. Beekeepers, by placing their honeybees in long-held locations, can reasonably expect that honeybees will travel to neighboring plantings, as this is the expectation when utilizing honeybees for pollination. The argument could be made that the beekeepers possess the requisite intent necessary for trespass. However, California's statutory scheme not only allows honeybees to trespass, it further deems their trespassing as essential to California's apiary industry. Right-to-farm statutes, discussed below, further protect beekeepers from liability for their trespassing honeybees where they have been utilized in the same location for over three years.⁷³

⁶⁵ Elizabeth Brubaker, *Property Rights in the Defence of Nature*, Chapter 1, Thou Shalt Not Trespass, 1978, available at <http://www.environmentprobe.org/enviroprobe/pridon/chapter1.html> (last visited Feb. 16, 2008.) [hereinafter Brubaker Chapter 1].

⁶⁶ RESTATEMENT (SECOND) OF TORTS § 158 cmt. i, illus. 4 (1965); see also Brubaker Chapter 1, *supra* note 65.

⁶⁷ RESTATEMENT (SECOND) OF TORTS § 158 cmt. i, illus. 4 (1965); see also Brubaker Chapter 1, *supra* note 65.

⁶⁸ Brubaker Chapter 1, *supra* note 65.

⁶⁹ *Sammons v. City of Gloversville*, 175 N.Y. 346, 349 (1903).

⁷⁰ *Id.* at 351-352.

⁷¹ *Id.*

⁷² *Bennett*, 118 Wis. 2d at 691 n.3.

⁷³ CAL. CIV. CODE § 3482.5 (Deering 2007).

B. Are Honeybees A Nuisance?

Although trespass has sometimes failed as a remedy for environmental problems, nuisance is an alternative legal remedy due to its history of being used to correct less material encroachments.⁷⁴ It is a general rule that the unreasonable or unlawful use by a person of his or her own property, which interferes with the rights of others, is a nuisance.⁷⁵ To constitute a nuisance, the interference with use and enjoyment of a property right must be unreasonable conduct that causes substantial harm.⁷⁶

Every nuisance not defined as a public nuisance is a private nuisance.⁷⁷ The basis of a nuisance action is found in Civil Code section 3479 et seq.⁷⁸ Nothing that is done or maintained under express authority of a statute can be deemed a nuisance.⁷⁹ Civil Code section 3482.5 applies broadly to bar a nuisance action brought by one commercial agricultural entity against another commercial agricultural entity.⁸⁰ This section applies even if the nuisance consists of a physical invasion of neighboring property, such as might be caused by irrigation runoff, and even if the cause of action is labeled as one for trespass.⁸¹

While Paramount Citrus could argue that the honeybees are causing substantial harm to its mandarin plantings, Paramount Citrus cannot prove that the beekeepers have acted unlawfully or unreasonably. Paramount Citrus cannot label beekeepers' activities of placing honeybees in long-held locations for the purpose of pollination a nuisance because their activities are statutorily protected by the citrus/honeybee protection statute and right-to-farm statutes.

The "coming to a nuisance" doctrine has been repudiated in California.⁸² A plaintiff is not barred from obtaining relief even though the plaintiff had knowledge of an existing nuisance when the purchase took place.⁸³ The courts have distinguished the "coming to a nuisance" doctrine from the consent defense, reasoning that the "coming to a nuisance" doctrine was involved where a new property use came to an existing use,

⁷⁴ Brubaker, *supra* note 65.

⁷⁵ Hutcherson v. Alexander, 264 Cal. App. 2d 126, 130 (1968).

⁷⁶ *Id.*

⁷⁷ CAL. CIV. CODE § 3480, 3481 (Deering 2007).

⁷⁸ People v. Lim, 18 Cal. 2d 872, 880-881 (1941).

⁷⁹ CAL. CIV. CODE § 3482 (Deering 2007).

⁸⁰ Souza v. Lauppe, 59 Cal. App. 4th 865, 874 (1997).

⁸¹ Rancho Viejo v. Tres Amigos Viejos, 100 Cal. App. 4th 550, 560-563 (2002).

⁸² Joseph J. Ybarra, Comment, *Refining California's "Consent" Defense in Environmental Nuisance Cases: Determining the Proper Scope of Liability for Responsible Former Owners*, 74 S. Cal. L. Rev. 1191, 1210 (2001).

⁸³ *Id.*

and then a claim arose for nuisance as to the older property use.⁸⁴ Based on the repudiation of the “coming to a nuisance” defense in California, Paramount Citrus is not barred from seeking relief even though it had knowledge of the use of honeybees at the time it purchased the land for mandarins.

Intentional nuisance arises most frequently in pesticide spraying,⁸⁵ where reasonable care is irrelevant.⁸⁶ Instead of focusing on whether the defendant used reasonable care, intentional nuisance focuses on whether the specific activity is reasonable for the location and based on the circumstances.⁸⁷ Conversely, an unintentional nuisance must involve negligence, recklessness, or other wrongful or abnormally dangerous conduct.⁸⁸ Private nuisance focuses on the interference of a person’s use and enjoyment of land by conduct that is “(a) intentional and unreasonable; or (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.”⁸⁹

Although it has been recognized generally that beekeeping does not rise to the level of nuisance per se, it may be a nuisance depending on the manner in which bees are kept under certain circumstances.⁹⁰ Most cases where beekeeping has been alleged as a nuisance have involved actual stinging of people near beehives. However, other cases have involved claims of laundry being soiled by bee droppings and flowers in a hot-house being damaged by neighboring bees.⁹¹ However, in *Allman v. Rexer*, the court held that a property owner’s beekeeping was not a nuisance and that commercial flower producers located within 450 feet of the beehives could not get an injunction to prevent the beekeeping activities of the property owner.⁹² The *Allman* court mentioned that the commercial flower grower could have prevented the bees from damaging the flowers by screening them in.⁹³

In *Allman*, the plaintiffs were seeking to limit the bees’ activities based on the plaintiffs’ financial investment, which was rejected by the court based on the reasoning that the mere diminution of property value was

⁸⁴ *Id.*

⁸⁵ Alexandra B. Klass, *Bees, Trees, Preemption, and Nuisance: A New Path to Resolving Pesticide Land Use Disputes*, 32 *Ecology L.Q.* 763, 805 n.202 (2005).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ David B. Harrison, J.D., *Keeping Bees as Nuisance*, 88 *A.L.R.* 3d 992, 2 (2001).

⁹¹ *Id.*

⁹² *Allman v. Rexer*, 21 Pa. D. & C. 431, 432—434 (C.P. Phila. County 1934).

⁹³ *Id.* at 434.

not grounds for relief in equity.⁹⁴ The court further held that the difference in profit between the plaintiff's and the defendant's businesses did not justify increased protection based on substantially higher profits for the plaintiffs.⁹⁵ Even though the financial worth of the defendant was insignificant, his or her legal rights are equal to plaintiffs.⁹⁶

Under *Allman*, Paramount Citrus' large financial investment in its seedless mandarins is irrelevant as a basis for limiting the activities of Tulare County beekeepers. Similarly, Paramount Citrus could screen in its mandarin crop at a cost of anywhere between five hundred to twelve thousand dollars per acre.⁹⁷ It is not unheard of to grow crops indoors; cucumbers are one example of seedless fruit which, because they produce fruit absent pollination, are grown indoors to avoid cross-pollination by honeybees.⁹⁸ If pollinated, the cucumbers would produce seeds.⁹⁹

Paramount Citrus will have a difficult time arguing that its new use of the land to grow seedless mandarins should be given greater legal protection than the farmers and beekeepers whose pre-existing uses of the land have been established for decades.¹⁰⁰ The argument is typically reversed, that pre-existing use of land is afforded greater legal protection.¹⁰¹

C. Right-To-Farm Statutes Protect Farmers and Beekeepers

The Legislature codified right-to-farm statutes to hold that any agricultural activity which is conducted for commercial purposes, according to accepted customs established by similar operations in the same agricultural community, cannot be deemed a private or public nuisance due to a changed local condition if that agricultural activity has been operating at least three years and was not originally a nuisance.¹⁰² The protected agricultural activities may include harvesting of an agricultural commodity, including apiculture, and practices performed incident to those farming operations.¹⁰³

⁹⁴ *Id.* at 433.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Dennis Pollock, *Beekeepers address a citrus impasse*, FRESNO BEE, Dec. 13, 2007, at C1-C2.

⁹⁸ Seedless European Cucumbers Grown in the United States, 54 Fed. Reg. 41601 (proposed Oct. 11, 1989) (to be codified at 7 C.F.R. pt. 968).

⁹⁹ *Id.*

¹⁰⁰ John Krist, *Seedy Story*, VENTURA COUNTY STAR, June 11, 2006, available at <http://blogs.venturacountystar.com/vcs/farming/2006/06/>.

¹⁰¹ *Id.*

¹⁰² CAL. CIV. CODE § 3482.5 (Deering 2007).

¹⁰³ *Id.*

Right-to-farm statutes began in the 1970s to prevent urban sprawl from overtaking farmland and to combat nuisance lawsuits that could threaten established farms.¹⁰⁴ The right-to-farm statutes provided protection for pre-existing farming operations from lawsuits based on nuisance where the operation pre-dated imposing nonagricultural activities.¹⁰⁵ When an agricultural activity which is also commercial is a nuisance, but is subject to Civil Code section 3482.5, the activity cannot be taken out of authority of the statute by characterizing the activity as a trespass.¹⁰⁶ The courts have held that the right-to-farm statutes protect established operations from nuisance suits by other farmers as well as urbanization.¹⁰⁷

The right-to-farm statutes protect farming operations and practices, including apiculture. Should Paramount Citrus decide to sue both the neighboring grower and the beekeeper, the right-to-farm statute will protect their activities.

VII. OTHER ALTERNATIVES FOR PARAMOUNT CITRUS AND SIMILARLY SITUATED MANDARIN GROWERS

A. *International Solutions*

In Spain, mandarin growers are allowed to spray insecticides to prevent honeybees from entering their mandarin blocks.¹⁰⁸ Conversely, California has enacted the citrus/honeybee protection to prevent such a tactic from being used locally.¹⁰⁹ By threatening to sue California beekeepers for trespass and requesting that honeybees are kept more than two miles away from its mandarins,¹¹⁰ Paramount Citrus may be attempting to mimic the Spanish legislation which requires beekeepers to keep their honeybees at

¹⁰⁴ Klass, *supra* note 85, at 814 n.236.

¹⁰⁵ *Id.*

¹⁰⁶ CAL. CIV. CODE § 3482.5 (Deering 2007); *Rancho Viejo v. Tres Amigos Viejos*, *supra* note 81, at 563.

¹⁰⁷ Bob Krauter, *Beekeepers, growers feuding: Accusations of cross-pollination and nectar-stealing could lead to lawsuit*, CAPITAL PRESS AGRICULTURE WEEKLY, June 26, 2006, available at www.capitalpress.info/main.asp?sectionid=67&subsectionid=616&articleid=24976&TM=71445.84.

¹⁰⁸ Traynor, *Mandarin Dilemma*, *supra* note 22.

¹⁰⁹ CAL. CODE REGS. tit. 3, § 6656(a) (2008); see also CAL. FOOD AND AGRIC. CODE § 29100 (Deering 2007).

¹¹⁰ Pollock, *supra* note 1.

least three miles away from mandarin plantings.¹¹¹ The Spanish government, however, pays the beekeepers to move their hives.¹¹²

Morocco has adopted a botanical rather than chemical solution, requiring certain varieties that produce pollen and thereby cause cross-pollination be removed from mandarin plantings.¹¹³ Clementine growers in California have attempted to prevent honeybees from pollinating their mandarins by requesting and/or paying neighboring property owners not to allow placement of honeybees on the neighbor's property.¹¹⁴ However, this is not likely to solve the problem of honeybees entering the mandarin crops¹¹⁵ because honeybees can travel four miles to the citrus blooms which are productive nectar sources.¹¹⁶

B. Ready to Tango: A Botanical Approach

Mandarins could remain seedless if planted with varieties that have sterile ovules which will allow seedless fruit to grow even in the presence of honeybees used for pollination.¹¹⁷ Mandarin growers also have the option to graft their mandarins over to a seedless variety.¹¹⁸ Most recently, a University of California at Riverside professor was successful in his ten-year effort to create the Tango, a seedless variety of mandarin that was developed from the W. Murcott.¹¹⁹ Research also has shown that the Tango produced almost no seeds, even when planted near citrus varieties that were seeded and capable of cross-pollinating the mandarins.¹²⁰ The Tango variety in such mixed plantings produced an average of less than 0.2 seeds per fruit¹²¹ compared to the unaltered W. Murcott with an average of eight to fifteen.¹²²

¹¹¹ Joe Traynor, *California Mandarins – A Seedy Tale*, BEE CULTURE, Apr. 2003, available at <http://www.beesource.com/pov/traynor/bcapr2003.htm>.

¹¹² Guy W. Whitney & C. Thomas Chao, *The Clementine Mandarin Industries of Morocco and Spain: Highlights of the Study Trip Sponsored by the California Citrus Research Board*, 2000, available at <http://www.citrusresearch.org/documents/5a26f3a7-f541-4816-b5e4-5dc97df6d60f.pdf>.

¹¹³ Traynor, *California Mandarins*, *supra* note 112.

¹¹⁴ Traynor, *Mandarin Dilemma*, *supra* note 22.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Traynor, *California Mandarins*, *supra* note 112.

¹¹⁹ Duran, *supra* note 6.

¹²⁰ Berkman, *supra* note 7.

¹²¹ Duran, *supra* note 6.

¹²² *Id.*

The Tango is not only self-infertile; it is actually seedless even in the presence of viable sources of pollen.¹²³ Further, it does not cause seeds in other varieties of seedless mandarins.¹²⁴ The Tango is available to growers for plantings that will produce a commercial crop within four years.¹²⁵ Estimates of Tango plantings exceed one million trees in the upcoming three to four years.¹²⁶

VIII. LEGISLATIVE APPROACH – ASSEMBLY BILL 771

Paramount Citrus supported Assembly Bill 771 (“AB 771”) which has gone through numerous revisions and amendments.¹²⁷ The Bill was introduced in February 2007 to amend section 5401 of the California Food and Agriculture Code, comprising of one short paragraph relating to pests as a public nuisance and allowing prosecution for their presence.¹²⁸ As amended on March 29, 2007, the language of AB 771 was entirely deleted and replaced with language which would authorize the Secretary of the Department of Food and Agriculture to create regulations to apply to seedless citrus varieties in Kern, Fresno, Tulare, and Madera counties.¹²⁹ As amended on April 11, 2007, the language of AB 771 was changed to amend section 48001 of the California Food and Agriculture Code instead of adding a new section.¹³⁰ This amendment related to procedures for inspection and shipping requirements of oranges, lemons, and mandarins.¹³¹ The amendment on May 1, 2007 added language to

¹²³ Berkman, *supra* note 7.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Listed as supporters of this ever-changing statute are as follows: Paramount Citrus, California Citrus Mutual, Carman Family Farms, Griffith Farms, Nisei Farmers League and California Grocers Association, with Paramount Citrus as a Co-Sponsor, *see* http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_cfa_20070921_143347_asm_comm.html [hereinafter Supporters of CWGA].

¹²⁸ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Introduction, Version Date: Feb. 22, 2007, *available at* http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070222_introduced.pdf.

¹²⁹ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: Mar. 29, 2007, *available at* http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070329_amended_asm_v98.pdf.

¹³⁰ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: Apr. 11, 2007, *available at* http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070411_amended_asm_v97.pdf.

¹³¹ *Id.*

amend California Food and Agriculture Code section 48001 to apply a mandatory hold on citrus following a citrus freeze.¹³²

The June 13, 2007 Amendment revealed the true motive behind AB 771. This amendment completely deleted the proposed amendments to Food and Agriculture Code section 48001 and replaced the entire language with a proposal to add section 29810.¹³³ The new proposal sets forth the prohibitions on beekeepers while seedless mandarins are in bloom.¹³⁴ The new amendment is referred to as the Seedless Mandarin Protection Act, and would be repealed in January 2009 unless a later enacted statute deletes or extends that date.¹³⁵ This amendment makes clear that 40,000 acres of citrus have been removed in the past five years in order to make room to plant seedless mandarins, namely Clementines and Murcotts.¹³⁶

This amendment also refers to actions taken by Spain in protecting seedless citrus varieties, as discussed above.¹³⁷ The amended protection would apply to plantings of six or more acres and would prohibit honeybees from the area within two miles of such plantings.¹³⁸ The amendment mimics the apiary protection statutes relating to bloom and petal fall requirements, but conversely *prohibits* instead of protects honeybees during this period.¹³⁹ This amendment would require the Tulare County Agricultural Commissioner to enforce a protection of the seedless mandarin, and also enforce the Apiary Protection Act.¹⁴⁰ It should be noted that both Fresno and Tulare County Farm Bureaus are listed as opponents of AB 771.¹⁴¹ This amendment further seeks to completely abolish

¹³² Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: May 1, 2007, available at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070501_amended_asm_v96.pdf.

¹³³ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: June 13, 2007, available at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070613_amended_sen_v95.pdf.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Listed as opponents of this statute are Bradshaw Apiaries, Brumley's Bees, C.J. Ritchie Farms, California Minnesota Honey Farms, Cary's Honey Farms, Inc., CRS Farming, Cummings Violich, Inc., Dancing Bee Apiaries, Eggman Family Honey, Foot-hill Honey Farms, Fresno County Farm Bureau, Glenn Apiaries, Glory Bee Company, LLC, Godlin Bees, Inc., H.W. DeHaven Apiaries, Heitkam's Honey Bees, Kern County Farm Bureau, Linderman Citrus Company LLC, Lohse Farms and Apiaries, M & D Honey, Madera County Farm Bureau, Miller Honey Farms, Inc., Miller Honey Mandar-

right-to-farm laws relating to this dispute by providing that any beekeeper who can document that his or her hives have been in a location for more than three years is only entitled to assistance from the affected grower in relocating the hives.¹⁴²

The June 28, 2007 Amendment changed the Seedless Mandarin Protection Act to the Seedless Mandarin and Honeybee Coexistence Working Group Act, which would authorize the Secretary of the Department of Food and Agriculture to adopt emergency regulations if the working group fails to reach a consensus by February 15, 2008.¹⁴³ It would further authorize the Secretary to adopt regulations to address coexistence issues despite best management practices or emergency regulations.¹⁴⁴ One positive aspect of this amendment is the deletion of the provision related to relocation of hives that have been in a location more than three years, thereby resolving the conflict with right-to-farm statutes.¹⁴⁵ However, this amendment deletes any date of repeal.¹⁴⁶

The July 12, 2007 Amendment includes “beekeeper” in the definition of “grower” and further purports to charge beekeepers fees to support the regulations if it is concluded that they receive more of a benefit than they have historically.¹⁴⁷ The amendment further provides for immediate enactment as an urgency statute, to protect agricultural products before the next growing season in order to preserve the public peace, health, or safety.¹⁴⁸ Although beekeepers are opponents of this ever changing “urgency statute,”¹⁴⁹ Paramount Citrus is in complete support of this effort. The originally proposed pest nuisance statute has been manipulated

ins, Olivarez Honey Bees, Inc., Peavey Apiaries, Pollination Connection, Pollination Contracting, Inc., Sandridge Partners, Scientific Ag Company, Sioux Honey Association, Steve Park Apiaries, Inc., Strachan Apiaries, Inc., Sue Bee, Terra Bella Honey Company, Tulare County Farm Bureau, Wer-Mor N' Honey, Westchester Group, Inc., and 17 individuals - http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_cfa_20070921_143347_asm_comm.html [hereinafter Opponents of CWGA].

¹⁴² Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: June 13, 2007, available at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070613_amended_sen_v95.pdf.

¹⁴³ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: June 28, 2007, available at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070628_amended_sen_v94.pdf.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: July 12, 2007, available at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070712_amended_sen_v93.pdf.

¹⁴⁸ *Id.*

¹⁴⁹ Opponents of CWGA, *supra* note 142.

somewhat surreptitiously into a citrus freeze statute, then to a Seedless Mandarin Protection Statute.¹⁵⁰

The September 6, 2007 amendment deleted any reference to it being an urgency statute¹⁵¹ and changed the date for the working group to reach a consensus to June 1, 2008, requiring the Secretary of the Department of Food and Agriculture to adopt regulations by February 1, 2009 in the event no resolution is reached.¹⁵² The California Senate recognized that honeybees pollinate approximately six billion dollars worth of California crops and have done so for many years.¹⁵³ The California Senate further established that this statute would apply only to Fresno, Kern, Madera and Tulare Counties, and deleted any requirement that beekeepers pay for any benefit received from the statute.¹⁵⁴ This enacted bill was chaptered on October 8, 2007.¹⁵⁵ It should be noted that the Tulare County Farm Bureau, an opponent of AB 771, indicated that an active working group between the beekeepers and mandarin growers is already in place, but has not been successful.¹⁵⁶

IX. POTENTIAL CONSTITUTIONAL CHALLENGES FACING THE SEEDLESS MANDARIN AND HONEYBEE COEXISTENCE WORKING GROUP ACT

The Seedless Mandarin and Honeybee Coexistence Working Group Act ("CWGA") currently authorizes the Secretary of the Department of Food and Agriculture to designate working groups to resolve conflicts that arise between sectors of agriculture.¹⁵⁷ It further allows the adoption of regulations in the event the working groups are unable to reach a resolution by June 1, 2008.¹⁵⁸ Interestingly, CWGA allows property owners to remain unaffected to farm any commercial crop, including honey, citrus, and other commodities, even if they fall within the area impacted by

¹⁵⁰ Supporters of CWGA, *supra* note 128.

¹⁵¹ Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Amended, Version Date: Sept. 6, 2007, *available at* http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20070906_amended_sen_v92.pdf.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Seedless Mandarin and Honeybee Coexistence Working Group Act, Assemb. B. 771, 2007-08 Reg. Sess. (Cal. 2007), Chaptered, Oct. 8, 2007, *available at* http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_771_bill_20071008_chaptered.pdf.

¹⁵⁶ Sarah E. Villicana, *Citrus growers, beekeepers clash*, THE PORTERVILLE RECORDER, Sept. 29, 2007, *available at* http://www.recorderonline.com/news/citrus_32078__article.html/beekeepers_seedless.html.

¹⁵⁷ Seedless Mandarin and Honeybee Coexistence Working Group Act, *supra* note 156.

¹⁵⁸ *Id.*

regulations created under the authority of this act.¹⁵⁹ This would negate any regulation and further require beekeepers to engage in legislated conflict resolution, as opposed to the freedom to choose an action, such as filing a lawsuit. Forcing beekeepers to deal with Paramount Citrus through legislated conflict resolution is beneficial to Paramount Citrus because any suit to enforce its rights based on any legal basis discussed herein would fail.

By requiring the Secretary of the Department of Food and Agriculture to create regulations if no resolution is reached, the legislature relinquished its responsibility to the Secretary. This imposition on the Secretary provides no guidelines for determining and creating said regulations, only that they are required to be created where no resolution can be reached by June 1, 2008.¹⁶⁰ This raises an issue of the constitutionality of CWGA, namely the unconstitutional delegation of legislative authority, and its constitutionality measured against the apiary protection statute and the right-to-farm statute.¹⁶¹ However, as the issues depend on future regulations set forth by the Secretary, none of these issues are directly addressed in this Comment as they are not ripe for discussion.¹⁶²

X. CONCLUSION

Although trespass might seem to apply to this dispute in theory, it does not work in reality. The law of trespass was not meant to extend this far, not even for seedless mandarins. In the dispute between Paramount Citrus, similarly situated mandarin growers, and beekeepers in Tulare County, Paramount Citrus is attempting to keep honeybees from entering its crop by threatening a lawsuit based on trespass where honeybees are needed for neighboring crops.¹⁶³ The apiary industry in Tulare County was given the right to allow its honeybees to trespass during the time specified between citrus bloom and petal fall by the codified citrus/honeybee protection, which was intended to prevent the killing of honeybees by pesticide spraying during that time.¹⁶⁴ This protection is

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Any issues arising from future regulations would be based on California law relating to apiary protection, right-to-farm, and the California Constitution.

¹⁶² Even though the Secretary may set future regulations, the CWGA mimics California's right-to-farm statute, which protects those beekeepers that have been placing hives in locations for more than three years. Any regulations purporting to interfere with that right-to-farm will be subject to a challenge as conflicting with existing California law.

¹⁶³ Pollock, *supra* note 1.

¹⁶⁴ CAL. FOOD AND AGRIC. CODE § 29100 (Deering 2007).

evidence of the importance of the apiary industry in Tulare County and other counties with similar citrus/honeybee protection statutes.¹⁶⁵

An attempt by Paramount Citrus to protect the use and enjoyment of land through the law of nuisance would be better reasoned, but likely unsuccessful as well. Right-to-farm laws protect neighboring farmers from nuisance lawsuits, allowing them to continue the farming practices, including the use of honeybees for pollination, which they have practiced for at least three years.¹⁶⁶ This would explain why only the beekeepers are being threatened with a lawsuit, not neighboring farmers. However, the right-to-farm laws also protect apiculture, which appears to insulate neighboring growers as well as beekeepers from liability for nuisance.

Research on cross-pollination of mandarins has been available to farmers since 1955.¹⁶⁷ This is not a new concept that would allow a grower to plead ignorance about the likelihood of honeybees carrying pollen from neighboring citrus to his or her mandarins, causing seeds. Although the W. Murcott was an attempt to get closer to a seedless mandarin, the research showed that growers would need to either plant their crop in isolation from other citrus varieties, or plant buffer rows to prevent seediness.¹⁶⁸

In addition to planting buffer rows, Paramount Citrus has another remedy – the Tango. Although the Tango was just made available to growers in 2006, it can be grafted onto trees and begin producing a truly seedless mandarin, despite cross-pollination, within four years.¹⁶⁹ While this would mean four years of lost profits for Paramount Citrus, the studies were available; Paramount Citrus was aware of the risk of seeds and chose to plant in the middle of an agricultural area that is citrus heavy. The lost profits of Paramount Citrus should not be placed on the beekeeper or neighboring citrus farmers.

Spain and Morocco have passed laws that protect the mandarin grower from cross-pollination by use of insecticides to kill honeybees or by having certain pollen producing varieties removed from the area where mandarins are planted.¹⁷⁰ In contrast, Tulare County's diverse farming community has chosen to protect the honeybees, not the newly planted mandarins.¹⁷¹ This is a more appropriate remedy for mandarin growers than

¹⁶⁵ *Id.*

¹⁶⁶ CAL. CIV. CODE § 3482.5 (Deering 2007).

¹⁶⁷ Soost, *supra* note 9.

¹⁶⁸ Kahn, *supra* note 12, at 2.

¹⁶⁹ Berkman, *supra* note 7.

¹⁷⁰ Traynor, *Mandarin Dilemma*, *supra* note 22; *see also* Traynor, *California Mandarins*, *supra* note 112.

¹⁷¹ CAL. CODE REGS. tit. 3, § 6656 (2007).

expecting honeybees to comprehend that they are unwanted in certain blocks of fruit trees.¹⁷² The botanical approach should be the remedy for mandarin growers since there are several mandarin varieties with sterile ovules that produce nearly seedless fruit despite honeybees or outside pollen sources.¹⁷³

The burden of the mistake of Paramount Citrus in planting a seedless variety of mandarin among other citrus varieties that would pollinate the mandarins and cause seeds should be borne by Paramount Citrus, not the beekeeper who has been pollinating crops in the area, or the farmer who has pollinated his or her crops using honeybees for at least three years. This result is critical for Tulare County agriculture, as it would cause undue hardship on Tulare County beekeepers if they were forced to remove their honeybees from citrus. Paramount Citrus at least has the option of grafting its crop to the Tango. Conversely, Tulare County beekeepers have no option for the production of orange honey other than to continue to place their hives in long-held locations. Further, local farmers use honeybees to pollinate their crops because local crops such as Kiwifruit and Pummelos require pollination for fruit production. Local farmers do not have an option to graft a variety that will self-pollinate; Paramount Citrus has the option to graft to a truly seedless mandarin and it needs to bear the burden of its mistake.

Paramount Citrus appears to recognize that it would almost certainly fail in attempting to bring a lawsuit against the beekeepers for trespass and nuisance based on its focused efforts on emergency legislation as opposed to proceeding with the threatened lawsuits. While the Senate recognized that there existed no urgency to adopt regulations relating to this dispute, it decided to attempt to force the Secretary of the Department of Food and Agriculture to legislate after the fact and in the midst of this dispute. This blank check of authority written to the Secretary of the Department of Food and Agriculture to create regulations for competing sectors of agriculture is nothing more than a modified attempt by Paramount Citrus to achieve the outcome it sought to achieve through the original legislation, which was rejected. The very nature of how AB 771 evolved paints a clear picture that Paramount Citrus would rather create new law than abide by existing law despite the devastating impact on California's apiary industry. Paramount Citrus should have spent its money preventing or correcting its mistake, not bullying beekeepers by surreptitious legislation.

KATHLEEN PHILLIPS

¹⁷² Traynor, *Mandarin Dilemma*, *supra* note 22.

¹⁷³ Traynor, *California Mandarins*, *supra* note 112.