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BROWARD COUNTY

A win for homeowners in citrus canker lawsuit

A jury will decide in April how much compensation the state should give 72,000 Broward residents whose citrus trees it felled, a judge ruled.

By Phil Long

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In a major legal victory for thousands of South Florida residents, a Broward circuit judge ruled Thursday that a jury -- not the state -- will determine how much the government will have to pay for citrus trees ripped from their backyards during the failed canker eradication program.

Broward Circuit Judge Ronald Rothschild rejected the Florida Department of Agriculture and Consumer Services' insistence that the trees were a valueless public nuisance because they had been exposed to citrus canker and might spread the disease.

Rothschild's ruling means the state must pay whatever a jury decides the trees are worth -- and not necessarily the \$100 for the first tree taken and \$55 for each additional citrus tree lost, which were the sums given to people who lost trees.

A jury trial is tentatively scheduled for April.

"We're elated with the ruling," said Miami attorney Bobby Gilbert, who represents tree owners in class-action suits in five counties.

It is not up to state agricultural officials, he said, "to arbitrarily tell these people what they can or cannot have."

The ruling, similar to one that was reached in Palm Beach County in December, came as part of a larger class-action lawsuit that affects about 72,000 Broward residents who had more than 133,000 trees felled by the state between 2000 and 2006.

State and federal officials believed it was necessary to cut down every uninfected citrus tree in Broward -- and also in Miami-Dade, Orange, Lee and Palm Beach counties -- that were within 1,900 feet of an infected tree. The theory was that the trees would become ill themselves, a concept that Rothschild said the state failed to prove.

"It was a great victory, and I think it was a well-deserved victory," said Tim Farley of Oakland Park about the judge's ruling Thursday.

"The judge made the right decision," said Farley, who lost two grapefruit trees, three orange trees and a lemon tree in 2000. "They trampled all over our constitutional rights," he said of the state.

In his 54-page decision, Rothschild wrote:

"The court finds that the department decided to sacrifice homeowners' trees to accomplish its stated goal of canker eradication."

"Thus the overwhelming evidence demonstrates that the [eradication program] was designed to accomplish its principal public purpose of protecting Florida's commercial citrus industry."

"The department acted in good faith under a mistaken belief that eradication would save the commercial citrus industry. Time proved the department's contention as untrue," Rothschild wrote.

The taking of the trees constituted a "compensable taking" under Florida's laws, Rothschild wrote. "The relevant inquiry is whether the property had value at the time it was taken," Rothschild wrote.

"While the department had the legal right and authority to destroy the trees owned by plaintiffs, based on the lack of evidence demonstrating that the trees were a public nuisance, the court finds that the department is liable to provide full and just compensation . . ." Rothschild wrote

In a statement, Agriculture Commissioner Charles Bronson expressed disappointment over the ruling and said he believed the state would prevail on appeal.

"It was truly unfortunate that residential and commercial citrus trees had to be destroyed," the statement said, adding that Bronson ``appreciated the sacrifices residents made throughout the program."

"The facts are bearing out what we feared would happen without the eradication effort," Bronson said in the statement.

Canker has spread to 30 citrus-producing counties.