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## California court rules insects not protected by Endangered Species Act

*Modesto, CA* - - The California Superior Court in Sacramento has ruled the California Endangered Species Act (CESA) does not cover insects and that bees cannot be classified as fish. The Court issued its final ruling on Nov. 19, 2020.

The Almond Alliance of California, in collaboration with seven other agricultural groups, filed suit with California Fish and Game Commission in response to a vote to grant candidacy status to four subspecies of bumble bees under the California Endangered Species Act (CESA).

The California almond industry recognizes that pollinators are integral to many natural habitats and are crucial for the production success of our industry. The Almond Alliance of California is pleased with the ruling and reiterates that the California almond industry continues to be committed to protecting the health and well-being of bees.

Ruling in *Almond Alliance of California v. California Fish and Game Commission*, Judge James P. Arguelles agreed with a group of petitioners including the Almond Alliance of California. The petitioners argued that the California Fish and Game Commission (the Commission) was not authorized by the CESA to give four species of bumble bees candidate-species status because the California Legislature was clear in the CESA that insects were not protected.

The Commission and the California Department of Fish and Wildlife unsuccessfully argued that bees and other insects and invertebrates are covered under the CESA because “invertebrates” are included within the definition of “fish” in Section 45 of the Fish and Game Code (FGC).

The case follows a 2018 petition from the Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and the Center for Food Safety to the Commission to add the four bumble bee species to the list of endangered species under the CESA. The four species of bumble bee were the Crotch, Franklin’s, Suckley cuckoo, and Western bumble bee. The bumble bees became candidate species, meaning “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that the Commission has formally noticed as being under review”,



when the Commission accepted the petition in June 2019. The court's Thursday ruling set aside the Commission's decision.

The Almond Alliance in conjunction with our trade organization partners argued that this consideration is not justified based on the following facts:

- Presently, no insects are listed as threatened or endangered under CESA.
- Both the California Office of Administrative Law and the California Office of the Attorney General have previously taken the position that insects cannot be listed under CESA.
- CESA defines candidate, threatened, and endangered species as "native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant." The list does not include insects.

If listed under the California Endangered Species Act (CESA), the bees would have been the first insects added. Pesticide restrictions, grazing rules, and other habitat protections could then be imposed. While the bees are "candidates" for listing, they have the same protections as species listed as threatened or endangered. This means prohibitions on killing them, which the Department of Fish and Wildlife routinely interprets to extend to harm to the bees or their habitat. That could lead to uncertainty if bumble bees are present on fields or in other areas where agriculture is happening. This type of ambiguity would be disruptive to the almond industry. For example, ripping or other soil movement could be claimed to disturb potential nesting sites. The petitioners specifically list honey bees as a threat to the bumble bees, thus a listing could regulate placement of or reduce the number of honey bee hives. Listing bumble bees as threatened or endangered is setting the stage for how other insect pollinators will be defined, regulated, and protected. The Alliance thanks Nossaman, LLP for effectively representing the coalition and appreciates those in our industry who contributed to the legal fund to support this effort.

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### **About the Almond Alliance**

*The Almond Alliance of California (AAC) is a trusted non-profit organization dedicated to advocating on behalf of the California almond community. California almonds generate more than \$21 billion in economic revenue and directly contribute more than \$11 billion to the state's total economy. California's top agricultural export, almonds create approximately 104,000 jobs statewide, over 97,000 in the Central Valley, which suffers from chronic unemployment. The AAC is dedicated to educating state legislators, policy makers and regulatory officials about the California almond community. As a membership-based organization, our members include almond processors, hullers/shellers, growers and allied businesses. Through workshops, newsletters, conferences, social media and personal meetings, AAC works to raise awareness,*



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*knowledge and provide a better understanding about the scope, size, value and sustainability of the California almond community.*

*For more information on the Almond Alliance, visit <https://almondalliance.org/> or check out the Almond Alliance on Facebook, Twitter and Instagram.*