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## Judge Rules Delta Farmer's Use of Pesticides a Form of Trespassing

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*Denver Post* ([http://www.denverpost.com/ci\\_21022037/judge-rules-delta-farmers-use-pesticides-form-trespassing](http://www.denverpost.com/ci_21022037/judge-rules-delta-farmers-use-pesticides-form-trespassing))

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**DELTA, Colo.** (AP) – A Colorado judge has ruled that a farmer spraying against mosquitoes needs to prevent the pesticide from drifting into a neighboring organic farm, likening the action to a form of trespassing.

Judge Charles Greenacre ruled Thursday that two farmers cannot use pesticides within 150 feet of an organic farm run by a neighbor. The case originated in Delta County, an area known for its orchards and farms, many of them organic, as well as wineries.

James and Georgia Hopper, farmers near Hotchkiss, had sprayed Fyfanon, a pesticide containing malathion, in 2010 in efforts to protect themselves against the mosquito-borne West Nile virus. Georgia Hopper was hospitalized after becoming ill with the virus in 2006.

Their property is near Gordon MacAlpine and Rosemary Bilchak's farm, which can lose its organic status if the presence of pesticide is detected. The couple started their farm to avoid food with pesticides because MacAlpine has leukemia and pesticides can suppress his immune system.

Greenacre ruled that the Hoppers have a right to protect themselves from West Nile virus but that they applied Fyfanon without regard for MacAlpine and Bilchak's property rights. In his decision, he said the couple had a right not to have their property "invaded by third persons or things."

Boulder lawyer Randall Weiner, who represented MacAlpine and Bilchak, believes it is the first ruling in Colorado to treat pesticides as a form of trespass.

The judge also said the Hoppers could only apply the pesticide when winds would not cause it to drift onto their neighbor's property.

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