

# Fruit grower claims DOL harassment

By DAN WHEAT  
Capital Press

ELLISFORDE, Wash. — A tree fruit grower who lost his workforce after a 2013 federal immigration audit says a separate labor investigation is holding him liable for \$186,000 in wages he doesn't owe.

Ernie del Rosario also says Seattle-based U.S. Department of Labor Wage and Hour Division investigator Katherine Walum violated agency procedure by trespassing on his orchard to talk to workers and "barged" into his house to harass his wife for payroll information on Sept. 23, 2014.

"It was breaking and entering without a warrant. My wife said, 'You have to give me time.' But the investigator said, 'Now or I call a U.S. marshal,'" del Rosario said.

DOL "strongly refutes" the allegations of harassment and illegally entering the del Rosario home but will not comment on active investigations, said Leo Kay, a DOL spokesman in San Francisco.

Del Rosario said he does not know if the unannounced inspection was connected to a U.S. Immigration and Customs Enforcement audit on Nov. 5, 2013. In that case, ICE ultimately required him to fire 65 of his 66 workers for mis-matching identification documents, indicating they were probably illegal immigrants.

After struggling with too few workers the next spring, del Rosario began hiring 50 to 60 H-2A visa foreign guest-workers annually for his 670-acre Northwestern Orchards north of Tonasket in Okanogan County, Wash.

Within days of the DOL inspection, del Rosario hired Brendan Monahan, a Yakima agricultural labor and crop at-



Dan Wheat/Capital Press File

Ernie del Rosario at his orchard fence that is the U.S.-Canadian border on Feb. 25, 2014. At left is his apple orchard. At right is a Canadian vineyard and the Canadian town of Osoyoos. Del Rosario, 80, believes he was unfairly treated by the U.S. Department of Labor during an investigation.

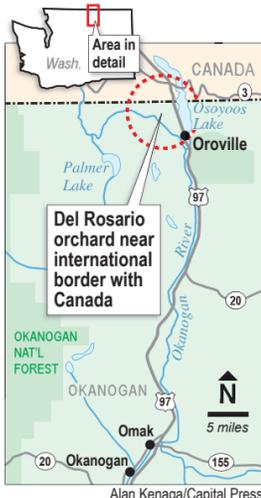
torney. Monahan advised del Rosario to turn over all pertinent records, which he did.

"There's disagreement over how hours are calculated and we are in the process of checking DOL's math," Monahan said on Nov. 14, the day he also submitted his first written responses to a four-hour preliminary finding hearing that involved him, del Rosario and Walum on Nov. 3.

Monahan and Kay would not disclose the preliminary findings, but del Rosario said DOL wants him to pay \$122,000 in wages for 21 H-2A workers that DOL claims he fired. But he says they were not ill-treated but walked off the job in violation of H-2A rules.

The department is also seeking \$64,000 for workers who complained they worked more than 10 hours per day but were only paid for eight, del Rosario said. Records show they only worked eight, he said.

A foreman and irrigator worked and were paid for 10 to 12 hours per day and be-



Alan Kenagal/Capital Press

cause of that DOL says the rest of the crew should be paid for the same hours even though they didn't work them, he said.

When the 21 workers left, he had to hire more workers and paid a 33 percent management fee to a labor contractor, del Rosario said.

"In the last 30 years, we've paid over \$9 million in taxes and this is what we get?" del

Rosario asked. "I want everyone to know what's being done to us. This is wrong."

Wage and Hour investigations usually begin from tips or random inspections, Kay said.

Investigators interview workers, owners, managers and review files before determining if back wages are owed, Kay said.

"We show the utmost respect to workers and business owners alike with a bottom line goal of ensuring all workers get paid according to federal labor law," he said.

Alleged potential civil violations of the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act and H-2A regulations are all in play, Monahan said.

"Under consideration is everything from whether or not wages were correctly calculated and paid to whether garbage can lids were appropriately affixed. We're responding to a broadly structured investigation," he said.

Monahan would not comment on what triggered the inspection and investigation. He would not comment on whether Walum trespassed on the orchard, broke into del Rosario's home and harassed his wife.

"I handle wage and hour audits for growers and in the vast majority of cases the investigation is initiated and concluded within a three- to nine-month period. This one is unusually long," Monahan said.

The closing conference, which took four hours, was unusually long, he said, while declining comment on why.

Monahan said he expects findings from DOL in two to three months that del Rosario will likely appeal.



Sean Ellis/Capital Press File

People stroll in downtown Boise Sept. 24. A USDA study found that while rural and urban economies have rebounded from the recession, rural areas still have not reached pre-recession levels.

## Rural areas lag in economic recovery, USDA study shows

### Growth in urban areas more robust, USDA finds

By MATEUSZ PERKOWSKI  
Capital Press

Employment in rural areas has improved in recent years but hasn't returned to pre-recession levels and lags employment growth in urban regions, according to USDA.

The agency's new report, "Rural America at a Glance," shows that while the economy has stabilized for many rural residents, their urban counterparts are experiencing a more robust recovery.

Between 2013 and 2015, rural employment rose 1.3 percent and grew 0.5 percent in the first half of 2016, but it's still lower than in 2007, when the "Great Recession" began, the report said.

"Meanwhile, urban employment has risen more than twice as rapidly in recent years and was 4 percent above its 2007 level by 2015," the report said.

The percentage of people working or actively seeking work, known as labor force participation, has declined in both urban and rural areas in recent years.

While labor force participation in rural areas is consistently lower than in urban areas, this "reflects the fact that a larger share of rural adults are older than the typical working age," the report said.

Rural residents have narrowed the gap in median earnings with their urban counterparts, but that's largely because earnings fell

more steeply in cities during the recession and haven't yet fully rebounded, the report said.

Earnings in rural areas were 16 percent lower than in urban areas in 2015, compared to 23 percent lower in 2007.

In terms of household income, rural counties dependent on recreation have generally fared the economic downturn better than others, but agriculture- and mining-reliant counties outperformed those dependent on manufacturing, government payments or that aren't specialized, the USDA found.

"The highest poverty rates and the lowest median household incomes are in those county types not associated with a clear private-sector economic base — that is, non-specialized and government-dependent counties," according to the report.

Urban population growth has outpaced rural population growth since the recession.

The number of people in urban areas has increased 8 percent since the recession, while the number in rural areas is up only half a percentage point, USDA found.

With about 46.2 million people, rural areas are home to just 14 percent of the U.S. population but represent about 72 percent of its land mass.

"Across many rural regions, slow rates of population growth from natural increase (births minus deaths), together with net population losses from migration, are netting little or no growth in the total rural population, with significant declines in some rural areas," the report said.

## Fallout over water ruling heats up in Washington

### Rural senators eye legislation

By DON JENKINS  
Capital Press

OLYMPIA — Several senators criticized Tuesday a recent Washington Supreme Court decision that threatens to halt home building in farm communities and said they will try to counteract the decision in the upcoming legislative session.

"It's totally ridiculous, what's going on. It's killing rural America," said Republican Sen. Brian Dassel, who represents the state's sparsely populated northeastern corner.

The 6-3 ruling in Hirst v. Whatcom County in October struck down the routine approval of new domestic wells. It also gave the 2017 Legislature another major battle along rural and urban lines.

The issue of whether wells can be drilled in places not served by waterlines has "bumped its way to the top of our list," said Moses Lake Republican Judy Warnick, chairwoman of the Senate Agriculture, Water and Rural Development Committee.

The committee was briefed on the ruling by the Department of Ecology and others. Domestic wells statewide are responsible for 1 percent of water consumption, and Ecology said new wells for single-family homes were OK in Whatcom County.

The high court, however, agreed with the environmental group Futurewise and other



Don Jenkins/Capital Press

Washington state Sen. Brian Dassel, R-Republic, gestures during a meeting Nov. 14 in Olympia of the Senate Agriculture, Water and Rural Development Committee. Dassel warned that if left in place a recent decision by the state Supreme Court could halt development in rural areas.

plaintiffs that cumulatively new wells could cut into existing water rights, including minimum stream flows for fish.

The ruling jeopardizes home building statewide. Prospective homebuilders may have to prove to county building departments that their wells won't harm other users, a potentially expensive and difficult undertaking for residents and counties.

The Washington Farm Bureau and other groups have condemned the decision for dashing the dreams of rural homeowners.

"I can't overstate the impact of this decision on average people," Washington Realtors policy director Bill Clarke said.

Ecology water resources

manager Dave Christensen told the committee that the agency has been receiving dozens of calls a day from worried residents. "Landowners are upset and concerned," he said.

Sen. Jim Honeyford, R-Sunnyside, said the Hirst decision would force people to live in crowded cities.

"That's really not the life a lot of Washingtonians want to have, but that seems to be the end goal of what's happening here," he said.

Futurewise state policy director Bryce Yadon said in an interview that the group wants to protect senior water rights, not end rural homebuilding.

The Hirst decision, he said, "doesn't shut down rural development. It just makes sure it's not occurring in inappro-

priate areas because there is no water."

Yadon said lawmakers could help rural homebuilders by setting up a process for finding water for new wells. "It's a great area for the Legislature to step in," he said.

The session was tilted heavily toward nullifying the ruling with legislation. Warnick said she expects a long and complicated battle once the session begins.

"I think they (environmental groups) are probably more than pleased about the decision," she said. "We're looking at less than 1 percent of the water usage. It makes wonder. It really does."

Futurewise was founded more than 25 years to support the state's Growth Management Act. One of the group's goals is to concentrate growth in cities, according to its website.

Whatcom County Executive Director Jack Louws said county officials are hearing from people who spent their savings on land and hoped to build.

"I want you to know the calls are heart breaking," he told senators.

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