

# Baker City ranchers suing USDA

Ranchers join legal battle over race-based federal loan forgiveness program

By MATEUSZ PERKOWSKI  
Capital Press

BAKER CITY — The possibility that USDA would forgive their farm loans seemed like a godsend for James and Kathryn Dunlap.

But shortly after hearing of the agency's new program, the Dunlaps learned they didn't qualify — only farmers from racial minorities were eligible.

"It kind of blew our minds," James said.

The couple has taken out about \$280,000 in loans from USDA's Farm Service Agency for cows and equipment to expand their ranch business near Baker City.

"Until that's paid off, we're just trying to survive," James said. "The goal was to grow. Unfortunately, while you're growing, it's very difficult."

Though they wouldn't have taken out debt they couldn't pay back, the Dunlaps found it troubling they'd been excluded from the loan forgiveness program for being white.

"If they want to offer a program, it should be available to everyone," he said.

James said he was content to merely grumble about the program but his wife convinced him to take action.

"Don't just complain about something unless you're doing something about it," Kathryn said.

## Is program constitutional?

With the help of the Pacific Legal Foundation, a libertarian public interest law firm, the Dunlaps have

filed a lawsuit challenging the USDA's minority loan forgiveness program as unconstitutionally based on race.

"Righting past discrimination with more discrimination is not the way to go about it," she said. "It should be based on individual circumstances."

The couple's lawsuit is one of 12 similar complaints filed across the nation that argue USDA's \$4 billion loan forgiveness program violates the Constitution's promise of equal protection under the law.

The litigation has been consolidated as a class action lawsuit in federal court in Texas, where U.S. District Judge Reed O'Connor has issued a preliminary injunction halting the program. Similar orders against it have been entered in three other states.

O'Connor wrote that "the government's claim that new race-based discrimination is needed to remedy past race-based discrimination is unavailing," meaning that it is ineffective.

Few topics are more sensitive or uncomfortable than race and money, especially in the current politically tense atmosphere.

The litigation against USDA tackles both subjects head-on.

The allegations of prejudice against white farmers may seem awkward, since the USDA itself has admitted to "decades of discrimination" against Blacks and other minorities.

The new loan forgiveness program is needed because American growers haven't equally benefited from FSA's lending practices in the past, the agency said in court documents.

"In fact, the evidence indicates just the opposite: that throughout USDA's history and up to present day,



John Boyd/Contributed Photo  
**John Boyd is the president and founder of the National Black Farmers Association. Discrimination against Black farmers still exists but the lawsuits and injunctions don't acknowledge that reality, Boyd said.**

minority farmers have been 'hurt' more than helped due to discrimination in USDA's farm loan programs," the agency said.

The federal government won't comment on the litigation beyond legal arguments filed on behalf of the USDA in court briefs, according to a U.S. Department of Justice representative.

## Frustrating situation

For minority farmers who stood to benefit from the loan forgiveness program before it was blocked, the situation is personally frustrating.

The litigation represents "more greed from white farmers in this country," said John Boyd, founder of the National Black Farmers Association and a fourth-generation grower in Mecklenburg County, Virginia.

Boyd said that in the past he'd been spat on by an FSA employee and had his loan application torn up, which aren't experiences the plaintiffs can comprehend.

"They don't know what discrimination is. They don't know what it looks like or what it feels like," Boyd said. "I just feel it's shameful white farmers are



Mateusz Perkowski/Capital Press  
**Kathryn and James Dunlap pose with their daughter, Evelyn, at the family's ranch near Baker City. The couple has filed a lawsuit over being excluded from a loan forgiveness program for minority farmers.**

doing this to us."

White farmers have historically been able to write down their debt, refinance it or have it forgiven by USDA while Black farmers have instead faced foreclosure, he said.

Discrimination against Black farmers still exists but the lawsuits and injunctions don't acknowledge that reality, Boyd said.

"In some fashion, you have to recognize this terrible history that occurred on American soil," he said. "Why not support a group of people that has just been dogged by the government?"

Black farmers represent about 1.4% of the agricultural producers in the nation, down from roughly 14% a century ago, according to USDA's Census of Agriculture data.

The proportion of Black farmers has plummeted over time due to a "bad taste in their mouth for the farm," going back to sharecropping and slavery, Boyd said. Even so, some remain committed to the industry.

"I love being a farmer. I'm going to die being a farmer," he said. "I love

the smell of the land when I throw that disc harrow in the ground."

## 'Structural problem'

The bias experienced by Blacks and other minorities isn't just a matter of individual FSA employees with a racist agenda, said Cassandra Havard, a law professor at the University of Baltimore who's studied the issue.

"It's a structural problem within the USDA," she said.

FSA's loan decisions are influenced by county committees elected by the local populace, Havard said. The arrangement can perpetuate racial bias because these committees are generally dominated by white farmers.

"You're in competition with other people who are also farming nearby," she said. "It was basically a way of cutting out the competition."

Boyd characterizes the situation facing Black farmers less diplomatically: "They know when you're in trouble with the USDA, they can purchase your farm for pennies on the dollar."

The USDA was accused of discrimination against

minorities in several lawsuits, including two class actions by Black farmers that were settled for \$2.4 billion.

However, the agency admits in court filings that the payments "did not cure the problems faced by minority farmers."

Many farmers were unaware of deadlines to file claims or faced problems qualifying for payments, raising concerns about whether the compensation was adequate, Havard said. "Farmers felt like it was difficult for them to be successful."

Banking records are private, which stifles comparisons between how Black and white farmers are treated by the FSA, said Susan Schneider, a law professor at the University of Arkansas who studied the issue. The USDA's civil rights office was dismantled in 1983 and wasn't reinstated until 1996, so many complaints were neglected.

"You had to be able to prove a very specific instance of discrimination," she said. "It's really difficult to prove these kinds of cases."

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