



# Capital Press

The West's **Ag** Weekly

FRIDAY, JANUARY 30, 2015

★ VOLUME 88, NUMBER 5

WWW.CAPITALPRESS.COM

\$2.00

**Attorney: DOL complicates minimum wage compliance**

By **MATEUSZ PERKOWSKI**  
Capital Press

The U.S. Department of Labor is changing its enforcement of minimum wage laws for farmworkers, potentially creating a new headache for growers, an agricultural attorney says.

The shift will pertain to workers who are paid on a "piece rate" based on the amount of crops they harvest, said Tim Bernasek, an attorney with Dunn Carney, at the law firm's recent annual Ag Summit in Wilsonville, Ore.

Until now, farmers just had to ensure that employees were paid enough at the end of the day to satisfy the minimum wage requirement, he said.

For example, a worker who harvests enough berries in eight hours to earn \$100 for the day is paid more than the \$74 necessary to meet Oregon's minimum wage requirement of \$9.25 per hour, regardless of how much time he actually spent picking fruit.

Under DOL's new approach, however, farmers will need to account separately for time that employees spend on the job but do not perform piece rate duties, such as when they're waiting for weather to clear or tools to arrive, Bernasek said.

So, if a worker must wait an hour for adequate weather before picking berries for seven hours, he would have to be paid \$9.25 for that first hour in addition to the piece rate for the crops he harvested — even if the total piece rate amount exceeded the minimum wage requirement for the day.

Apart from potentially increasing labor costs, the new enforcement strategy could complicate recordkeeping requirements for farmers.

Growers will be expected to pay the minimum wage for tasks that are hard to monitor, such as the time individuals spend waiting in line to register for work, Bernasek said.

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# AGRICULTURE'S BILLION-DOLLAR CHALLENGE



Illustration by Alan Kenaga/Capital Press

## Environmental groups oppose many aspects of farming, ranching, timber

By **DON JENKINS**  
Capital Press

**T**he 10 largest environmental organizations operating in the West collectively raise almost \$1 billion each year to fund their activities, including filing lawsuits targeting farmers, ranchers, timber companies and the federal government.

The lawsuits often attack farming and ranching activities, but most focus on how the government enforces the federal Endangered Species Act, a law Congress passed in 1973 to protect some plants and animals. They include salmon, sage grouse, wolves and hundreds of other species either listed or under consideration for protection.

Environmental groups have pushed government managers — often through lawsuits — to protect the populations. In California alone, 321 species are protected under the ESA, according to the U.S. Fish and Wildlife Service. In Oregon, the number is 62, in Washington it's 57, and in Idaho 22 species are listed. Those listings are accompanied by reams of regulations to protect the species and their habitats.

Though government agencies and agricultural groups attempt to negotiate with the environmentalists, doing that is often difficult, industry representatives say.

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### Recent court actions by environmental groups

A sampling of recent court filings show environmental groups' wide range of interests.

- The Center for Biological Diversity on Jan. 20 sued the U.S. Fish and Wildlife Service in Colorado over listing the Gunnison sage grouse as "threatened" rather than "endangered." USFWS explained that states, tribes, local communities and landowners are taking measures to save the grouse. The CBD accused the federal agency of bowing to "intense pressure from industry groups and states."
- The CBD and Earthjustice sued a day after the USFWS announced on Jan. 15 a plan to manage Mexican gray wolves in Arizona and New Mexico. The agency anticipates a fourfold increase in the wolves' range, with a population of 300 to 325 wolves. Environmental groups say the plan is too restrictive.
- Earthjustice on Jan. 14 notified USFWS it will sue to stop the "incidental take" of 15 grizzly bears around Yellowstone National Park.
- CBD sued USFWS on Dec. 30 for not putting two wildflowers in Utah and Colorado on the endangered species list. The group alleges voluntary conservation measures should be replaced with mandatory Endangered Species Act protections.
- CBD petitioned the Oklahoma Department of Wildlife Conservation on Dec. 18 to put the Texas horned lizard on the state's protected species list. The center said a 15-year-old boy contacted the center for help after learning a shopping center would be built in a field where he likes to catch lizards.
- CBD petitioned USFWS on Dec. 18 to reintroduce grizzly bears into the Selway-Bitterroot Wilderness in Idaho and Montana. The group said putting grizzlies there would be a key part of establishing them over 110,000 square miles in seven states.
- CBD notified USFWS on Dec. 11 it will sue to protect the Tinian monarch, a small bird found only on the 39-square-mile Tinian Island in the Northern Marianas. Missions to drop atomic bombs on Hiroshima and Nagasaki were launched from there. CBD alleges U.S. military training on the island threatens Tinian monarchs.

**"It's really hard to hold hands and sing 'Kumbaya' and roast marshmallows over the fire when you're in the middle of depositions."**

Dairy farmer **Jay Gordon**  
director of governmental affairs for the Washington State Dairy Federation



Alan Kenaga/Capital Press

## Bird flu found in commercial flock

Quarantine lifted in Benton, Franklin counties in Wash.

By **DON JENKINS**  
Capital Press

Highly pathogenic bird flu has struck a commercial turkey flock in California's Central Valley, escalating the virus' threat to the U.S. poultry industry.

The U.S. Department of Agriculture posted a notice Jan. 24 reporting that

H5N8 bird flu had been confirmed in Stanislaus County.

Foster Farms, which has several poultry farms in the county, said it detected the virus during routine testing and alerted the USDA's Animal and Plant Health Inspection Service.

The virus was confirmed in one turkey house with 9,000 birds and is related to avian influenza strains previously found in migrating ducks in Washington, Oregon, Idaho, California and Utah, according to a report by the World Organization

for Animal Health.

Although tests were negative for avian flu in other turkey houses on the farm, the other birds will be euthanized, according to the USDA.

The USDA and California Department of Food and Agriculture have quarantined the farm.

Bird flu spread to 11 British Columbia, Canada, commercial poultry farms in the first half of December, but until this

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