

Litigation is big business for the environmental groups

NO from Page 1

Dairy farmer Jay Gordon, director of governmental affairs for the Washington State Dairy Federation, says negotiating compromises to agriculture-environmental conflicts is a painstaking, at times painful, process.

"It's democracy. It means you've got to put a huge amount of time into basic understanding," he said. "Sadly, some of the environmental groups choosing to sue us are shutting that down."

"It's really hard to hold hands and sing 'Kumbaya' and roast marshmallows over the fire when you're in the middle of depositions," Gordon said. "I don't mind criticism, but let's have a conversation, not just hold a gun to my head."

Big business

Litigation is big business for the environmental organizations, which often use the deadlines in the ESA as leverage to get their way with the government.

Last year alone, they filed 526 environmental lawsuits in federal courts, according to a search of public records. The year before, the number was 1,421.

One of the most litigious groups is Earthjustice, a nonprofit law firm formerly called the Sierra Club Legal Defense Fund. The group promotes itself with the catchphrase, "We exist because the Earth needs a good lawyer."

The San Francisco-based group, which boasts 94 lawyers in 10 regional and one international office, entered 2015 involved in 370 active court cases. Over the last two years, Earthjustice has collected \$6.4 million in court-awarded attorney fees.

Besides attorney fees awarded by courts, the nonprofit organizations also solicit donations from their supporters.

Another group, the Center for Biological Diversity, has collected \$2 million in attorney fees during the same time.

The proliferation of lawsuits draws fire from critics, who say the environmental groups abuse the courts and force federal agencies to change or adopt new policies by bowing to what they call "sue-and-settle" tactics. Those tactics involve flooding the courts with lawsuits against an agency such as the U.S. Fish and Wildlife Service, forcing it negotiate a settlement.

"One of the big challenges has been litigation activity," Washington Cattlemen's Association Executive Vice President Jack Field said.

"There are groups that litigate, litigate, litigate," he said. "It's been a perpet-



Seattle author Don Stuart says farmers need flexibility but environmentalists want certainty, setting the stage for conflicts over regulations. Courtesy photo



Don Jenkins/Capital Press

Conservation Northwest director Mitch Friedman, shown here in a Seattle coffee shop, says a culture clash underlies much of the conflict between farmers and environmentalists. "A lot of the environmentalists I know don't have a lot of experience with the agricultural community."

ual funding machine."

The U.S. House last summer passed legislation to cap the attorney fees plaintiffs can collect from the federal government in ESA lawsuits.

"That would be a huge, critical first step," Field said.

The White House has threatened to veto the legislation if it ever reaches the president. At the request of House Republicans, the Government Accountability Office investigated the litigation's influence on the U.S. Environmental Protection Agency. The GAO reported last month that the EPA issued 32 major air-pollution rules between 2008 and 2013 and nine stemmed from lawsuit settlements.

The Center for Biological Diversity in its 2013 annual report takes credit for securing "new protection of 55 animals and plants."

"We do have some pretty terrific environmental protection laws," center spokeswoman Amaroq Weiss said.

The GAO estimated in 2012 that over a decade federal agencies paid \$21.1 million in attorney fees and

legal costs to plaintiffs in 238 lawsuits based on the Endangered Species Act.

The stakes are large for the environmental groups, but they are enormous for agriculture in the West. In California and the Pacific Northwest alone, 175,366 farms produce crops and livestock worth \$64.4 billion a year, according to the 2012 USDA Census of Agriculture. And most of the those farms and ranches have been impacted by ESA-related regulations such as those governing water use and quality, forest management and grazing on public and private land.

No communication

Seattle resident Don Stuart, who wrote a book on conflicts between environmentalists and farmers, said lawsuits shut down communication, the best remedy for resolving differences.

"When you're litigating something, you almost can't really talk to anyone," he said.

Weiss said her group talks, calls and writes agriculture producers before resorting to lawsuits. The center, however, won't

compromise on what it sees as sound science, she said.

In an interview, Weiss was particularly critical of meat production, calling some practices "inhuman for the animal and devastating for the environment." Eating less meat "would be a great start" toward a healthier planet, she said.

"People need to eat, and there has to be food production. At the same time, we're very concerned about agricultural practices that continue to focus on animal agriculture," she said.

Americans have been privileged to have access to a variety of foods. But, she added, "the environmental consequences of that are never taken into account economically."

"Our concern is that the way agriculture is practiced is not sustainable for the planet," she said. "I don't think it's elitist to ask people to be thoughtful about their food choices."

A culture clash

Hardly any aspect of agriculture escapes criticism, or a lawsuit.

"No one else in this country faces a more poisonous, unregulated workplace than the agricultural worker," an Earthjustice blog says.

"Livestock grazing spreads invasive species, increases the fire risk and degrades rivers and streams," the Center for Biological Diversity says.

Dominant agricultural practices are a "dead end," the Union of Concerned Scientists says.

Environmentalists would be wiser to try to understand, not vilify, farmers, said Stuart, whose book is titled "Barnyards and Birkenstocks: Why Farmers and Environmentalists Need Each Other."

"If the farmer goes out of business, it's not an environ-

mental win," he said. Farms often give way to other less environmentally friendly development.

Stuart's idea for the book began forming more than a decade ago when he was executive director of the Washington Association for Conservation Districts.

Stuart, who has a background in law and commercial fishing, said he thought the job would be easy and that he would be embraced by farmers and environmentalists. It wasn't, and he wasn't.

Farmers were "sort of lukewarm" and more concerned about avoiding regulations, he said. Meanwhile, environmentalists were constantly in a lather over "life and death on the planet."

"The bottom line is nothing gets done," he said. "And the environment suffers."

Stuart, who was later the American Farmland Trust's Pacific Northwest director, said different perspectives set up clashes between farmers and environmentalists.

Environmentalists find comfort in uniform and permanent rules, while farmers are worried about costs and whether they will survive another year, he said.

"I think the environmental movement by and large is an urban movement. I think that from their viewpoint, they need something certain," he said. "But if you start passing rules, you end up passing rules that work for a few people, maybe work OK for others and don't work at all for a bunch more."

Ideologues abound

Conservation Northwest founder and director Mitch Friedman agreed much of the conflict between environmentalists and farmers is rooted in culture.

"A lot of environmentalists I know don't have a lot

of base of experience with the agricultural community," Friedman said.

Friedman founded his group, formerly called Northwest Ecosystem Alliance, in 1989 after spending time as an often-arrested Earth First! tree-sitter.

He also spent a summer as a teen-age ranch hand in Wyoming. Environmentalists should know agriculture is hard and "on a scale, it's a lot less damaging than a lot of land uses," he said.

"I have trouble with ideologues that are rooted in distrust, combativeness," he said. "I find plenty of that on both sides."

Friedman's group advocates bringing wolves and grizzly bears back to Washington state. Still, in 2012, he supported the lethal removal of wolves from the Wedge Pack to curb livestock predation.

According to Friedman, moderation has its price.

"It's a problem," Friedman said. "Our pragmatism makes us vulnerable."

"Throwing red meat to enthusiastic personalities works. It works for political parties. It works for the Seattle Seahawks. We are a tribal society," he said. "It leads to fundraising success. It doesn't lead to solutions on the ground."

Conservation Northwest reported revenues of almost \$2 million in 2013.

A narrowing gulf

Field, the cattlemen's group executive, said cattle grazing near waterways has been the biggest conflict between ranchers and environmentalists. Field said his "chips are all in" on working with the Washington Department of Ecology to write rules that cattlemen and conservation groups can accept.

The process includes listening to environmentalists, he said.

"It think it's valuable for agriculture to hear their perspective," Field said. "It's not like it's all been wine and roses for sure, but I think we're moving in the right direction."

Gordon, the dairyman, said farmers need to show more people what they're doing, including providing wildlife habitat. On the other hand, Gordon said he doesn't blame anyone for being cautious about opening up their operations. "Anyone with an attorney can sue anybody for any reason, and they do," he said.

Gordon represents the dairy industry in Olympia, moving from meeting to meeting to come up with policies that can be supported by urban and rural legislators. He said he's optimistic the gulf between environmental and agricultural groups can be narrowed through this slow process.

"I can't focus on the lawsuits because they give me ulcers."

'I feel pretty confident that if we challenge them, we will win'

DOL from Page 1

The first worker to sign in can start picking berries immediately, but the one at the end of the line may have to wait 15 minutes, he said. Those 15 minutes would be logged separately from the time spent harvesting.

"Under this scenario, you will be required to account for each bit of those hours," Bernasek said. "How do you track that?"

Growers must pay the minimum wage during periods of time when workers are unable to earn the piece rate because it's a requirement of the Migrant and Seasonal Worker Protection Act, or MSPA, said Richard Longo, director of enforcement for DOL's western region.

When an employer tells migrant workers they'll be paid the state minimum wage, they must receive that rate when they're denied the opportunity to harvest crops or

perform other piece rate duties, he said.

DOL had previously focused on ensuring that workers are paid the federal minimum wage of \$7.25 per hour under the Fair Labor Standards Act, Longo said.

Now that more farmers are in compliance with the FLSA, the agency can better enforce MSPA, he said. "It's not a new position, in a sense, it's just a new emphasis on what the rules require."

Bernasek said case law does not require such a convoluted system for tracking wages.

"I feel pretty confident that if we challenge them, we will win," he said.

Even so, litigating with the agency is not a desirable process for farmers, which is why the agriculture industry should ask its congressional delegations to press DOL on the issue, he said.

Another possible ap-

proach — though it has not been tested — is for farmers to base hourly wages on productivity, Bernasek said.

In other words, workers who brought in more berries per hour would be paid a higher hourly wage, instead of directly being paid a piece rate.

It could be problematic to communicate such a wage scale, since workers may not understand why people are paid different hourly wages, said Austin Chapin, whose family grows cherries and hazelnuts near Salem, Ore.

Providing productive workers with a bonus above the hourly rate may be a less complicated approach, he said.

The easiest solution would be to reduce the amount of down time for employees, if possible, Chapin said. "It will make us have to really minimize the amount of time standing around."

Backyard flocks have been infected in Washington, Oregon and Idaho

FLU from Page 1

this instance the highly contagious and lethal virus had been confined in the U.S. to non-commercial flocks, wild birds and captive falcons.

"We feared that at some point it was going to end up in commercial operations," USA Poultry and Egg Export Council President Jim Sumner said.

Backyard flocks with access to the outdoors and in contact with disease-carrying wild birds have been infected in Washington, Oregon and Idaho.

Low pathogenic bird flu — less virulent than the highly pathogenic strains circulating in the West this winter — was detected in a Stanislaus County, Calif., quail farm last April.

The European Union and Japan on Monday reacted to the newest case by banning poultry raised, processed or shipped from California.

Many countries have already banned poultry from Washington, Oregon and Idaho and likely will now put California on the list.

None of the West Coast states are major poultry producers for export, but their ports provide access to Asian markets.

Poultry exporters already were struggling with port slowdowns that have affected other commodities. Restrictions on shipping from the West Coast will further hamper the industry, Sumner said.

The Port of Oakland is particularly important for poultry exports, he said.

"The thing that concerns us is California is a transit center for the world," Sumner said. "You can't feasibly airfreight poultry."

The Washington State Department of Agriculture on Tuesday lifted a quarantine imposed in parts of Benton and Franklin counties

after two non-commercial flocks were infected with highly pathogenic bird flu.

The quarantine, which was in place for 21 days, restricted the movement of eggs, poultry or poultry products in the zone.

The avian influenza detected in the two Benton County backyard flocks in December apparently did not spread beyond those two sites, according to WSDA.

Veterinarians with the U.S. Department of Agriculture and WSDA visited approximately 1,800 premises in the quarantine area and tested samples from birds at more than 70 locations. All samples tested negative for avian influenza.

Restrictions remain in place in parts of Clallam County, where a second quarantine was established after a flock was confirmed infected with the H5N2 avian influenza virus on Jan. 16.