

## 'Regulatory takings are very difficult to prove'

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Jackson County's ordinance is a form of "inverse condemnation," in which the government takes private property without using its power of eminent domain.

It would be easier for the farmers to prevail if they convince the judge that the ban on genetically modified organisms is a "physical taking" of their property, said Paul Sundermier, an Oregon attorney specializing in takings and condemnation cases.

They can also claim that the GMO ban is a "regulatory taking," but this is a tougher legal route because the plaintiffs would have to show the ordinance eliminated all the economically viable use of their property, Sundermier said.

"Regulatory takings are very difficult to prove," he said.

The question would then be whether removing the alfalfa completely wipes out its value, since the farmers may still be able to sell the hay even if they ultimately kill the perennial plant.

Even as the case shifts to government takings, it's possible that the "right to farm" argument may be resurrected on appeal.

The plaintiffs could wait until the entire case is finished before challenging Clarke's findings or obtain a partial judgment that they could appeal earlier, among other options.

Capital Press was unable to reach Jackson County for comment. The ordinance was set to take effect on June 5 but the county previously agreed not

to enforce the prohibition until there's a judgment in the case.

The Center for Food Safety, a nonprofit critical of biotech crops, considers the ruling a "big win" but expects the plaintiffs will challenge it before the 9th U.S. Circuit Court of Appeals, said George Kimbrell, senior attorney for the group.

The judge has recognized that genetically engineered crops pose a significant commercial threat to non-biotech growers, which was a key issue in the litigation, Kimbrell said. "This case is a resounding affirmation of the right of farmers to protect themselves from GE contamination."

Most Oregon counties are pre-empted from regulating GMOs under Senate Bill 863, passed by lawmakers in 2013. The legislature excluded Jackson County from the legislation because its GMO prohibition initiative was already on the ballot when SB 863 was enacted.

Roughly two-thirds of Jackson County voters approved the measure in a 2014 election. The county includes the cities of Ashland and Medford.

The alfalfa farmers argued that SB 863 did not affect the "right to farm" law, which they interpreted as protecting their genetically engineered alfalfa crops from being destroyed regardless of the GMO ban.

The judge disagreed, pointing to testimony from lawmakers representing the county who claimed the ordinance was necessary to avoid unwanted cross-pollination between biotech crops and those that are conventional or organic.

# New spillway completed at Idaho's Minidoka Dam

By CAROL RYAN DUMAS  
Capital Press

RUPERT, Idaho — About 200 people were on hand to celebrate the completion of a four-year project to modernize and straighten the spillway and replace two irrigation headworks at the century-old Minidoka Dam 10 miles northeast of Rupert.

The Bureau of Reclamation project, in partnership with the Minidoka and Burley Irrigation districts and USDA's Rural Development, brought dam operations — which began in 1906 — into the 21st century.

The dam provides water storage and delivery to 128,000 acres of farmland and delivers power to irrigators in Minidoka and Cassia counties. But the efficiency of that service was compromised by the aging infrastructure of the spillway and headgates.

"We wanted to keep that reliable service going for the next 100 years, but we had to do something different," Bureau of Reclamation Commissioner Estevan Lopez said during the Wednesday completion ceremony.

The old spillway structure with its manual stop-log, water-control gates was replaced and modernized with 12 automatic radial gates capable of releasing 6,000 cubic feet per second.

"This was a very big project in the making," said Roland Springer, the bureau's Upper Snake field office manager.

It took a lot of time and ef-



Carol Ryan Dumas/Capital Press

Water from Lake Walcott flows through open control gates on the new Minidoka Dam spillway in southern Idaho on May 27 during the Bureau of Reclamation ceremony to mark completion of the four-year project.

fort. If the structure could talk, it would tell stories of long days of Bureau and construction crews working in triple-digit heat, sub-zero temperatures, high winds and clouds of pests, with tents over the concrete so it could cure, he said.

Total cost for the project is about \$24 million, with the local irrigation districts funding 42 percent.

Irrigators initially resisted against the need to replace the structure that had served well for 100 years, but recognized that reality when core samples showed serious deterioration, said Dan Darrington, president of Idaho Water Users Association and Burley Irrigation District board member.

Project costs were originally estimated at \$70 million, and irrigators immediately panicked. Searching for assistance, the

districts found financial help at USDA's Rural Development agency, he said.

The economic return of the dam operation is immeasurable, and the water rights that come with it are the envy of the state, he said. The vision and fortitude of the area's ancestors — who built the structure with the use of steam engines and dug the canals and laterals with teams of horses — has resulted in a thriving community that expands beyond agriculture, he said.

USDA Rural Development State Director Wally Hedrick — whose grandfather and great uncle were laborers constructing the dam and whose grandmother cooked for the early workers — said the reconstruction project was a collaboration for rural opportunity.

Modernization of the spillway and irrigation diversion gates is an outstanding project that relied on the ongoing good partnership with irrigators, said Lorie Lee, the bureau's Northwest regional director.

And the project found a great partner in Meridian, Idaho-based Record Steel and Construction, which kept environmental health in its sites, she said.

Aging storage structures across the West, climate change and issues of water management that seem to get more contentious and more difficult will continue to challenge the bureau and irrigators. But like the Minidoka project, progress can be made through partnerships, Lopez said before he flipped the switch to open the new spillway control gates.

## Experts: Online sales will profit farmers

### Grocery-industry disruption expected to improve market transparency

By MATEUSZ PERKOWSKI  
Capital Press

Grocers are expecting a disruption from online sales in coming years, but experts say the shift will likely profit farmers and food processors.

The transformation of the overall retail world, driven by such companies as Amazon, will affect the food industry at a time when grocers are already facing pressure to consolidate, according to experts at a recent executive forum organized by Portland State University.

While the looming changes are causing anxiety among established retailers, the creation of new sales channels is expected to loosen their grip on the market to the benefit of suppliers, experts say.

"It will reduce the traditional power that retailers have," said

Tom Furphy, CEO of the Consumer Equity Partners venture capital firm and a former vice president of Amazon's grocery, health and beauty division.

With more ways for food producers to reach consumers, the market will be more transparent and major grocers won't be able to exercise as much buying power as they do now, he said.

"It will allow producers to get closer to their customer," Furphy said.

Suppliers are insulated from the turbulence in retail because they're still ultimately making something that people need to buy, said Jack Buller, an industry consultant and former retail expert at Procter & Gamble.

Food producers with established outlets at major retailers will face more competition, but the overall increase in "distribution points" will help farmers and processors, he said. "It touches more consumers."

"Bricks and mortar" retailers aren't going to disappear but they must re-evaluate which items they stock and how those products are presented, said

Herb Sorensen, who tracks internet consumer behavior.

The traditional retail model requires massive investments in stores and merchandise, but the actual sales generated by those expensive displays are proportionately rather paltry, he said.

By comparison, online retailers such as Amazon don't rely on physical presentation and move through inventory faster, Sorensen said. "Online is very capital-efficient."

Physical stores are most vulnerable to losing sales of "routine" items that shoppers buy at regular intervals, he said. They're also less competitive in selling the "long tail" of specialized products that don't generate high sales volumes but collectively take up a lot of shelf space.

The future of traditional stores probably lies in providing convenience, a fun shopping experience as well as "surprise and delight" products that consumers buy on impulse, Sorensen said. "If you need it now, you need a bricks and mortar store."

Online ordering is becoming increasingly simple for companies to set up, while wholesalers like Sysco are in a position to diversify into retail deliveries, he said. The future will likely include pick-up and delivery options for consumers.

Meanwhile, shoppers will probably grow intolerant of walking through large, overstocked stores, said Buller. "Anything that takes away pain from the shopping experience is an opportunity."

The current environment is particularly difficult for regional grocery chains, which can't afford to use food as a "loss leader" and engage in a "war of attrition" as the national chains do, said Scott Moses, managing director of food, drug and specialty retail at Sagent Advisors, which works on mergers and acquisitions.

The grocery industry is similar to department stores a generation ago, before national chains consumed the regional players, Moses said. "It makes for an environment where people can come in and disrupt things."

## More than 1,800 wells in Calif. have gone dry

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The study follows warnings by the Center for Watershed Sciences last summer that farmers hit hardest by the drought could see their wells run dry this year if rain and snow remained scarce.

That prediction has come true, as more than 1,800 wells around the state have already gone dry, according to food and ag board chairman Craig McNamara. About 1,100 wells have failed in the Porterville area, according to Stephanie Cortez, president of the Porterville Chamber of Commerce.

"One of the things we're worried about in a fourth year of drought is how many of the wells are going dry," said Jay Lund, a UC-Davis engineering professor. "Essentially 71 percent or more of the surface water shortages is being made up with groundwater. That's a lot."

The researchers' prediction of 564,000 fallowed acres is slightly below the more the 600,000 fallowed acres anticipated by McNamara. The Fresno County Farm Bureau has estimated the amount of fallowed ground could total closer to 1 million acres.

The scientists' presentation preceded a board discussion on how to improve media and public perception of agri-

cultural water use during the drought.

Roxi Beck of the Center for Food Integrity, an organization working to build confidence in the modern food system, told the board that research shows that appealing to shared values is about five times more important than sharing facts when it comes to building trust with key consumers.

The group examined opinion surveys of mothers, Millennials age 21 to 34 and "foodies" — those with refined interests in food and seek new food experiences — and found that consumers value transparency in operations, she said.

Beck urged industry representatives to "go where people communicate" and "speak their language." They should listen without judgment, ask questions and then share the industry's story, she said.

"What's happening right now is we hear the criticism ... and we skip directly to No. 3," she said.

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