

Hawaii GMO battles will shape West's rules

Key court cases will impact entire 9th Circuit

ANALYSIS
By **MATEUSZ PERKOWSKI**
Capital Press

Legal battles over genetically modified organisms in Hawaii are expected to shape government authority over biotech crops across the West.

Three attempts to regulate GMOs by counties in that state — Kauai, Hawaii and Maui — have all been overturned by federal judges.

How those decisions play out in the 9th U.S. Circuit Court of Appeals will affect the ability of state and local governments to set their own rules for biotechnology, experts say.

The 9th Circuit has jurisdiction over seven states, including Oregon, Washington and California, where several counties have enacted GMO bans that are subject to its rulings.

"Hawaii is definitely the

bellwether right now," said Kristine Tidgren, staff attorney for the Center for Agricultural Law and Taxation at Iowa State University.

A federal judge most recently struck down Maui County's prohibition against biotech crops on multiple legal grounds.

Significantly, Chief U.S. District Judge Susan Oki Mollway held that federal regulations entirely pre-empt Maui County's ordinance banning GMOs, which was passed last year.

If the ruling is upheld by the 9th Circuit, that would directly implicate other GMO bans within the same jurisdiction, meaning they'd be pre-empted as well, said Tidgren.

Conversely, if the appellate court finds that state and local government GMO rules are not pre-empted by the federal regulations, then it would clear the way for such ordinances.

"It's a huge case for local and state GMO bans," Tidgren said. "The stakes are very high. All eyes will be on the 9th Circuit when this case goes forward."

Supporters of county GMO bans contend that Mollway's legal reasoning is faulty.

In their view, federal regulations cannot pre-empt state and local GMO regulations once the USDA allows such crops to be grown without restriction.

The 9th Circuit has held that USDA has no authority over biotech crops once it determines they're not plant pests, so commercialized GMOs aren't subject to federal regulations, critics say.

"I don't believe there's any basis whatsoever that federal law pre-empts state law over deregulated crops," said Paul Achitoff, an attorney for groups that support the ban.

The situation is compli-



AP Photo/The Maui News, Matthew Thayer
In this photo taken Sept. 10, 2014, Monsanto crew leader Zenaida Arcala places a pollination bag over a corn tassel in Kihei, Hawaii. A federal judge has ruled that the Maui County ban of GMO crops is illegal. It and two other Hawaii GMO cases are expected to be heard by the 9th U.S. Circuit Court of Appeals.

cated by the fact that another federal judge earlier reached a different conclusion regarding

a similar GMO ban in Hawaii County, he said.

In that case, the judge

found that the GMO ban is pre-empted by federal regulation only in regard to crops that remain regulated by USDA, not those that have been totally deregulated, Achitoff said.

That opinion is likely to be reviewed by the 9th Circuit much earlier than the recent Maui decision.

If the panel of judges hearing the Maui County case comes to a different conclusion than the panel for Hawaii County — which isn't likely but remains possible — that could set the stage for a broader "en banc" review by a larger group of 9th Circuit judges.

Another GMO case out of Kauai County is likely to be decided first, but that lawsuit pertains to regulations that require growers to report the location of GMO crops but don't prohibit them.

It's unlikely that all three of the cases will be resolved earlier than late 2016, experts say.

Idaho's table grape yields reduced but better than expected

By **SEAN ELLIS**
Capital Press

PARMA, Idaho — Table grape yields in Idaho are expected to be significantly reduced this year due to the effects of a sudden November cold snap.

The state's 2015 table grape harvest will be about 65 percent of normal, though researchers initially feared it would be far worse, said University of Idaho researcher Essie Fallahi, who heads UI's pomology program in Parma.

"Table grapes this year are doing much better than we thought they would," Fallahi said. "We thought we weren't going to have any crop at all but now we're looking at 65 percent of normal, which is much better than nothing."

Several daily low temperature records were broken in mid-November when the mercury fell suddenly and dramatically. The low reached minus 5 degrees at UI's Parma research station and hovered near 0 for four days.

A few days before the temperature drop, highs were in the 60s and many grape vines never had a chance to go into dormancy.

Researchers and growers feared the worst, said grape grower Tom Elias, secretary-treasurer of the Snake River Table Grape Growers Association.

"We were very worried. We're much happier now," he said while looking at robust clusters of grapes in a Parma vineyard.

Elias said growers who followed the cultural practices developed and promoted by UI's pomology program fared better in general than those who didn't.

The majority of Idaho's table grapes are grown in Ada, Canyon and Owyhee counties in Southwestern Idaho, where winter temperatures can routinely drop below zero degrees.

The most important cultural practice in this area is cutting off irrigation to grape vines shortly after harvest so



Sean Ellis/Capital Press

Alborz table grapes grow in a Parma, Idaho, vineyard June 25. Idaho's table grape harvest will be reduced this year due to the effects of a November cold snap, but it's looking much better than growers and researchers had initially thought.

they have a chance to reach dormancy before the first cold spell hits, Elias said.

Growers who did that last year had "vines that were more in a dormant stage than other vines that were not taken care of," Fallahi said. "Those are the growers whose vineyards survived the best."

Growers in the region should give their table grape vines one more good shot of water after harvest and then shut irrigation down for the year, Elias said.

When irrigation is cut off, sugars and starch are pushed into the root system and when a deep freeze comes, "there's nothing in there to freeze and it really doesn't hurt the vines," he said.

There are still a lot of growers in the region who fear their vines will die if they stop irrigating in September because it's still hot out, Elias said.

"The plant's not going to die," he said. "It's going to go dormant."

But even many growers who followed that cultural practice got hit hard by the November frost because of the dramatic swing in temperatures, Elias said.

Cindy Chumley, who grows table grapes between Kuna and Nampa, lost a lot of vines to the cold and is seeing a lower volume of grapes on many of her surviving vines.

"It's a reduced crop this year," she said. "The table grape industry got hit hard this year."

Grass seed suffers from drought, heat

Willamette Valley growers report yield reductions of 20-50 percent

By **MATEUSZ PERKOWSKI**
Capital Press

Drought and heat have stressed Oregon's grass seed crops in multiple ways, which has farmers expecting a substantial decrease in yields now that harvest is underway.

It's still too early to know the exact impact, but farmers are preliminarily reporting yield reductions of 20-50 percent, said Mark Simmons, executive director of the Oregon Grass Seed Bargaining Association.

"This year is extremely unusual. It's the equivalent of the 50-year flood," he said. "It's really tough for farmers who grow grass seed."

With less water available, grass cannot carry as much sugar to its seed, said Tom Chastain, seed crop physiology professor at Oregon State University.

That sugar is converted to starch that's used to "bulk up" the embryonic plant and the "endosperm" that feeds it within the seed, he said. This year, dry conditions in spring have hindered grasses from filling the seed, reducing its weight.

Enzymes that convert sugars to starch are also affected by high temperatures, said Chastain. "The heat is exacerbating the problem because it interferes with some of those enzymes."

Not only are seeds lighter, but there are also fewer of them — drought hinders pollination and causes the "abortion" of seeds, he said.

"We have a lot of producers who are very concerned right now," Chastain said.

During 1992, which had weather conditions similar to this year's, grass seed yields in Oregon's Willamette Valley were cut by 11-14.5 percent overall, he said. That average includes irrigated acres, so dryland farmers likely experienced more severe impacts.

Chastain said the outlook for 2015 currently appears bleaker, with growers reporting average yield losses of 25 percent.

"Hopefully, that's a worst-case scenario," he said.



Photos courtesy of Ron Cooper
A combine empties a full bin of orchard grass seed into a truck during harvest on the Alan McKee farm in Polk County, Ore. The unusual perspective was taken by Salem photographer Ron Cooper using a photo drone camera piloted by Devin Fadenrecht.

Ron DeConinck, a farmer near Woodburn, Ore., said he's expecting a 20 percent reduction in yields despite irrigating his fields, though that figure remains speculative at this point.

Fields that were irrigated twice seem to be faring well but those only irrigated once are clearly damaged, he said. "There were a few days there, it literally burned it."

Rodney Hightower, a farmer near Junction City, Ore., said growers in the southern Willamette Valley are expecting yield losses of 30 percent.

His farm produces several grass types, as well as specialty seeds and some grain, and the drought stress has affected most of them, he said. "This year, being diversified may not help a whole lot."

Marion Ag Service's seed cleaning operation is 10 days ahead of schedule due to the warm weather, which is the earliest that the company's seed specialist, Scott Banyard, can remember.

An acre usually generates roughly 2,500 pounds of grass seed, but this year the range is about 1,700-2,000 pounds to



A combine seems toy like as it moves across a patchwork of fields and orchards while harvesting orchard grass seed on the Alan McKee farm in Polk County, Ore. The unusual perspective was taken by Salem photographer Ron Cooper using a photo drone camera piloted by Devin Fadenrecht.

the acre, said Banyard.

The only upside to the low yield expectations is that demand for grass seed may consume this year's crop as well as leftover inventories.

If that happens, growers will be in a strong market position next year, said Sim-

mons. "From that perspective, we're hopeful."

Farmers in the Willamette Valley have scaled back their grass seed production in favor of other crops in recent years, which has reduced supplies and improved prices, he said.

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