Tim Hearden/Capital Press

Grower Tyler Christensen operates a machine that loads freshly harvested prunes onto flats at the Mill Race Dryer in Red Bluff, Calif., on Aug. 11. The harvest of a diminished prune crop has begun in California.

# Calif. prune harvest begins as growers expect lighter crop

By TIM HEARDEN
Capital Press

RED BLUFF, Calif. — Growers have started the harvest of what is expected to be a diminished prune crop in California because of heat and a decline in acreage.

While fresh plums have been in stores and farmers' markets since May, growers in the Yuba City area started harvesting prune varieties last week, according to the National Agricultural Statistics Service in Sacramento.

In the northern Sacramento Valley, prunes began to arrive at dryers around Aug. 10 as some growers said their yields may be a little lighter than expected.

"The heat's really taken its toll on all the trees, but it's still a very good crop," said Tyler Christensen, who owns a dryer on the outskirts of Red Bluff and farms more than 400 acres of prunes as well as almonds and walnuts. "The sugar is going to be really good."

Michael Vasey, manager of Lindauer River Ranch in Red Bluff, said he's just getting a sense of how his orchards are doing. The ranch includes a dryer and 600 acres of prunes, walnuts and wheat.

"It's a good crop," said Vasey, president of the Tehama County Farm Bureau. "What I'm trying to determine is if it's as good as we thought or not as good as we thought … I've heard from others that it may be a little lighter than they expected."

The warm early-spring weather in California this year was already expected to cause prune tonnage to be slightly below last year's.

Based on a survey of growers, the National Agricultural Statistics Service in Sacramento predicted a 100,000-ton prune crop for this summer and fall, down 4 percent from the 104,000 tons pulled from dryers in 2014.

While the prune set appeared to be good, the warm and early spring may have increased the amount of smaller fruit, NASS explained.

In addition, several stretches of triple-digit afternoons in the valley in late June and July led to a few cases of blue prune, a malady in which fruit tissue tries to open prematurely and the fruit falls off the tree, growers said.

However, the fruit that's survived has been free of defects, Vasey said.

"You can have fungus or … insect damage, but everything I've seen come through our dryer is looking really clean," he said. "The size of the fruit is quite varied. Some are really big and some are small, and they could be from the same tree."

California's prune production has dropped considerably in the last decade as a global glut of prunes pushed down prices and prompted some growers to switch to more profitable commodities such as walnuts and almonds. But prices paid to farmers have rebounded in recent years, reaching as much as $2,500 a ton last year.

This year's total bearing acreage for prunes statewide was expected to be 48,000, which is equal to last year, according to NASS.

# Lawsuit raises questions about landlord liability

## Responsibilities of farm operators, landowners at center of case

By MATEUSZ PERKOWSKI
Capital Press

Should landlords be held legally responsible for the hiring activities of farm operators who lease their land?

That question is headed to the Washington Supreme Court as part of a lawsuit that pits farm workers against two farm management firms and an orchard owner.

The landlord in this case is the John Hancock Life Insurance Co., which owns several apple orchards in Yakima County, Wash.

Those properties are leased to two companies — Farmland Management Services and NW Management and Realty Services — that cultivate the land for a fee but turn the profits over to the owner.

In 2013, a federal judge ruled that all three companies owed more than $1 million to 722 farm workers because the on-the-ground orchard operator failed to register as a farm labor contractor as legally required.

U.S. District Judge Thomas Rice reasoned that since the farm operator provided labor for a fee, it qualified as a labor contractor.

The defendants claimed the farm operator is effectively the direct employer in this case and doesn't act as a traditional labor contractor, but the judge rejected this argument.

As the penalty for not registering, he ordered the company to pay each worker $500 per year worked, which amounted to $1,004,000.

The ruling was challenged before the 9th U.S. Circuit Court of Appeals, which has now referred the case to the Washington Supreme Court.

Specifically, the 9th Circuit wants the state's highest court to answer two legal questions: Under Washington law, does an operator who manages "all aspects of farming" count as a labor contractor? And if so, can the landowner be held liable for unknowingly hiring an unregistered labor contractor?

While farmers are expected to ensure labor contractors follow the law, it's unusual for landlords to be held responsible as well, said Tim Bernasek, an attorney specializing in agriculture at the Dunn Carney law firm.

"I've not seen that kind of liability flow up to them," he said. "This is a very novel question that I don't know has been asked before."

While the type of arrangement between the insurance company and farm operators is relatively new in Northwest agriculture, crop-sharing agreements between landlords and growers are common, he said.

Regardless of its outcome, the case highlights the need for written contracts between landlords and farmers that spell out the tenant's obligations to abide by the laws and obtain all necessary registrations, Bernasek said.

Such agreements should indemnify the landlord of liability and allow him to audit the tenant to ensure all applicable rules are being followed, he said.

The traditional handshake agreement between tenants and landlords is simply too risky if the farmer is found to violate environmental or other laws, Bernasek said.

Dan Fazio, executive director of WAFLA, formerly the Washington Farm Labor Association, said the Washington Supreme Court will hopefully clarify that the farm operator in this case did not break the law.

"They didn't think they had to be registered as a contractor because they were the employer," he said.

Fazio called the $1 million judgment "outrageous" because the workers weren't actually harmed by the lack of registration.

"It's an absolute miscarriage of justice," he said.

# Oregon firm gets investment to advance ag biomass market

By ERIC MORTENSON
Capital Press

Pacific Ag, a Hermiston, Ore.-based business that sells wheat, corn, grass seed and other crop residue to biofuels plants and other uses, has received a $7 million funding boost from Advantage Capital Agribusiness Partners.

Pacific Ag will use the investment to continue its growth in the Northwest and elsewhere, including Kansas, North Carolina and North Dakota, company CEO Bill Levy said in a statement.

Levy said the company is seeing rapid growth in demand for large quantities of crop residue, and is positioned to respond to the market.

In addition to providing cellulosic feedstock to make ethanol, the company also sells crop residue as livestock feed and to make mushroom compost, erosion control products to "tree-free" pulp and paper.

In an April 2015 interview with the website Biofuels Digest, Levy said his company partners with 600 growers across the country and this year will harvest more than 450,000 tons of biomass. He said the company owns the largest fleet of harvesting equipment and supplies cellulosic refineries operated by companies such as DuPont and Abengoa.

The investment is part of a USDA effort to steer funding into agricultural enterprises. Advantage Capital Agribusiness Partners, based in St. Louis, is a $154 million fund licensed as a rural business investment company by the USDA. The fund is a joint venture by Advantage Capital Partners and nine banks or other lending organizations that are federally chartered to serve ag businesses through Farm Credit Services.

Pacific Ag, founded in 1998, first focused on providing crop residue as cattle feed for domestic and export markets. In the Biofuels Digest article, Levy said the company recognized about six years ago that "feedstock supply for bio-refineries was a huge market opportunity, and one that we are uniquely able to serve." The company now describes itself on its website as the nation's biggest supplier of agricultural biomass supply chain solutions.

Courtesy of Pacific Ag

Stacks of baled straw await shipment. Harvest residue from wheat, grass seed, corn and other crops can be used to make biofuels. Pacific Ag, of Hermiston, Ore., is a national leader in supplying biomass to fuel plants.

# *PORTS Act filed in House*

By DAN WHEAT
Capital Press

A bill allowing governors of seaport states and territories to invoke the Taft-Hartley Act to order dock workers to work has been introduced in the U.S. House by legislators from Washington, Colorado and American Samoa.

H.R. 3398, introduced Aug. 5, is a companion measure to S. 1519 introduced June 5 by Sens. Cory Gardner, R-Colo., and Lamar Alexander, R-Tenn. The Senate bill has been referred to the Committee on Health, Education, Labor and Pensions.

The House bill is sponsored by Reps. Dan Newhouse and Dave Reichert, both of Washington; Mike Coffman, of Colorado; and Aumua Amata Coleman Radewagen, of American Samoa. All four are Republicans.

The House and Senate bills are known as the Protecting Orderly and Responsible Transit of Shipment (PORTS) Act. They are in reaction to a May 2014 through February 2015 work slowdown at 29 West Coast ports during contract negotiations between the International Longshore and Warehouse Union and the Pacific Maritime Association.

Losses to the U.S. economy from the slowdown cost up to $2.5 billion per day and contributed an anemic 0.2 percent annual growth rate in the first quarter of 2015, Sen. John Thune, R-S.D., has said.

On May 12, Thune introduced S. 1298 to collect metrics of port marine terminal productivity for an early warning system to know when terminals are no longer operating normally.

Exports of imports of many commodities through the West Coast were impacted, including agricultural exports of apples, pears, hay, chilled beef and pork, frozen and dehydrated potato products, frozen vegetables, forest products, Christmas trees, citrus fruit, nuts and rice.

The slowdown ended when an agreement for a new contract was reached in February. It took a couple more months for ports to rebuild normal flows.

"While the parties ultimately came to an agreement, the process took far too long and the damage to our economy was far too great," the sponsors of the House bill said.

Under Taft-Hartley, the president may appoint a board of inquiry to study disputes of threatened or actual strikes or lockouts affecting trade among states and foreign nations that if permitted to occur would imperil national health or safety. Upon a report by the board, the president may direct the attorney general to petition a court of jurisdiction to end a strike or lockout.

The PORTS Act expands that to include slowdowns and gives the governors of impacted states or territories authority to appoint boards of inquiry and petition courts for injunctions if the president does not act within 10 days of receiving a request.

The House bill directs the U.S. comptroller general to study the economic impact of the recent slowdown, review attempts at federal mediation, identify steps that could have been taken sooner and determine what legislative changes would result in more timely intervention.

# Predator control lawsuit resurrected

By MATEUSZ PERKOWSKI
Capital Press

A lawsuit that challenges the legality of USDA's predator control program has been resurrected by a federal appeals court.

The 9th U.S. Circuit Court of Appeals has re-opened a case filed by the Wildearth Guardians environmental group that seeks to stop the agency's Wildlife Services division from killing predators across the U.S.

The complaint alleges that USDA's management of predators is based on "woefully outdated and inadequate" studies that were conducted 20 years ago or longer.

The agency's "indiscriminate killing methods" affect not only "majestic animals" like wolves, coyotes and mountain lions, but also non-target threatened and endangered species as well as family pets, the complaint said.

Research that was used to justify the predator control program only focused on 17 species, but the Wildlife Services division acknowledges killing more than 300 species, the complaint said.

USDA's spending on predator control has also increased roughly five-fold over the past two-and-half decades, according to Wildearth Guardians.

The environmental group also points to multiple internal audit reports from USDA's Office of Inspector General that fault the Wildlife Services division for improperly securing poisons that could be used in terrorist attacks.

By refusing to update its scientific analysis of the predator control program, as requested by Wildearth Guardians, the agency has violated the National Environmental Policy Act, the complaint alleges.

The complaint sought an injunction against any "predator damage management" by Wildlife Services until the agency completes a new study of the program or sufficiently supplements its existing analysis.

However, in 2013, a federal judge dismissed the environmental group's lawsuit without ruling on the merits of the allegations.

U.S. District Judge Miranda Du ruled that the plaintiffs failed to show they were injured by the predator control program and thus lacked the legal standing to oppose it in federal court.

The 9th Circuit has now reversed that opinion, finding that the "reduced recreational and aesthetic enjoyment" by a member of Wildearth Guardians is enough of an injury to establish standing.

Now that the case will be considered on its merits, the USDA's previous court filings offer a clue as to its likely defenses against Wildearth Guardians' claims.

The agency argued that it's authorized by Congress to control animals that are harassing or killing livestock.

Regardless of its legal standing, Wildlife Guardians isn't eligible to challenge the predator control program because the USDA isn't taking any new action, according to the agency.

Legal precedents dictate that environmental groups cannot sue to overturn federal policies unless they're challenging a specific "agency action," the USDA said.