

Temporary rock barrier removed from Delta as winter approaches

By **TIM HEARDEN**
Capital Press

SACRAMENTO — In another sign of hope as winter approaches, crews are taking down the temporary rock wall barrier that kept saltwater out of the drought-depleted Sacramento-San Joaquin River Delta this summer.

Crane crews for the state Department of Water Resources reopened water flows on Oct. 1 as they remove about 150,000 tons of riprap that had been placed in the Delta south of Sacramento since June.

The work must be finished by Nov. 15 under the state's federal permit because of fishery and flooding concerns, said Paul Marshall, chief of the DWR's Bay-Delta office. While the rocks are being stockpiled in the Rio Vista area for use next summer if needed, they're also available for flood control this winter, Marshall said.

"We already had a pile of rocks stockpiled over there for Delta emergencies," he said.

Hopes for a sudden abundance of water have intensified amid predictions that a strong El Nino would persist through the winter, bringing higher-than-normal precipitation to at least parts of drought-parched California.

A fourth year of drought made the barrier necessary this summer to preserve Delta water quality and conserve water in upstream reservoirs that otherwise would have been released to block incoming tides of salty water from San Francisco Bay, officials explained. Without the barrier, growers



Photos courtesy of Calif. Dept. of Water Resources

Crews remove a temporary rock barrier from the Sacramento-San Joaquin River Delta south of Sacramento on Oct. 1. The barrier was to keep saltwater from intruding in the drought-depleted Delta.



Paul Marshall, chief of the California Department of Water Resources' Bay Delta office, makes comments as crews remove a temporary rock barrier from the Sacramento-San Joaquin River Delta south of Sacramento.

ers and others in the Delta region would have experienced much higher salinity levels, Marshall said. Removing the barrier became possible this fall as temperatures cooled and growers' demand for water

lessened, he said. "Generally speaking, November is that month when everything happens," he said, referring to the typical arrival of winter storms. "We have to get any kind of barriers out of

the river to be able to accept flood flows."

In other drought-related developments:

- Urban Californians reduced water use by 27 percent from 2013 levels in August, exceeding Gov. Jerry Brown's 25 percent conservation mandate for a third straight month, the State Water Resources Control Board reported.

Cumulative water savings during the summer put the state halfway to its goal of 1.2 million acre-feet saved by February 2016, officials said.

- The state's drought-education campaign, Save Our Water, has released its second TV commercial aimed at encouraging residents to keep saving water in the fall. The spot shows how Californians are shifting the way they think about water after four years of drought, state officials said.

Biotech developers may have duty to prevent export disruptions

Judge allows corn farmers' lawsuit against Syngenta to proceed

Analysis
By **MATEUSZ PERKOWSKI**
Capital Press

Biotech developers may have a "duty of reasonable care" to ensure new genetically engineered crops don't disrupt export markets, according to a recent court ruling.

That legal duty may extend beyond the obligation to win clearance from USDA and other regulators for a crop's commercialization, U.S. District Judge John Lungstrom has ruled in a controversial lawsuit over a transgenic corn variety developed by Syngenta.

Lungstrom said the federal government's deregulation of the company's insect-resistant Viptera corn "did not necessarily immunize Syngenta from any liability for wrongful acts connected to the commercialization or sale of those products."

"More specifically, Syngenta has not shown that the government agencies' approval extended to the area of the financial impacts in the market" due to commercialization, he said.

The lawsuit comes in reaction to Syngenta selling the new corn traits to U.S. growers before they'd been granted approval in China, which resulted in that country rejecting many U.S. corn shipments.

Farmers filed lawsuits against the company seeking compensation for the resulting drop in corn prices allegedly caused by the export disruption, with the cases getting consolidated in Kansas federal court.

Syngenta asked the court to dismiss the lawsuit, arguing that the corn variety was legal to sell in the U.S., among other allegations.

Lungstrom didn't agree

with that argument, finding that Syngenta may have legal duties beyond obtaining regulatory clearance in the U.S., though he did dismiss some of the plaintiffs' other legal claims against the company.

The implication that biotech companies have a duty to protect export markets is significant, but the ruling still leaves that standard ambiguous, said Drew Kershen, an agricultural biotechnology law professor at the University of Oklahoma.

"It's not clear to me how strong that duty is going to be," Kershen said.

For example, Syngenta could argue that China imposed unreasonable regulatory constraints, he said.

Supporters of biotechnology fear the lawsuit's progress will prompt biotech developers to rethink commercializing genetically engineered crops, even if the USDA signs off on them.

"We are very concerned when other countries basically have a veto of new technologies going forward," said Mary Boote, CEO of Truth about Trade and Technology, a nonprofit that favors biotech innovations.

If companies are forced to consider other factors beyond U.S. regulation — such as foreign approvals — it impedes their ability to introduce new products that benefit farmers, she said.

"There's no clear vision on what that path may be right now," Boote said.

Critics of biotechnology say the ruling shows that current USDA regulations are insufficient to protect farmers from negative market consequences caused by genetically engineered crops.

"This disruption to the market has caused significant harm to them," said George Kimbrell, attorney with the Center for Food Safety, which has opposed several USDA deregulations of genetically modified organisms.

Judge sends Oregon ranchers back to prison

Required five-year minimum sentence imposed for burning BLM land

By **MATEUSZ PERKOWSKI**
Capital Press

EUGENE, Ore. — A father and son who raise cattle in Eastern Oregon are headed back to federal prison for committing arson on public land.

Dwight Lincoln Hammond, 73, and his son, Steven Dwight Hammond, 46, were sentenced on Oct. 7 to five years in prison for illegally setting fires on U.S. Bureau of Land Management property near Diamond, Ore.

The ranchers had already served shorter sentences because the federal judge originally overseeing their case said the five-year minimum requirement "would shock the conscience."

The Hammonds were subject to re-sentencing because the 9th U.S. Circuit Court of Appeals threw out those original prison terms for igniting fires in 2001 and 2006 as too lenient.

Previously, U.S. District



Steven Hammond

Dwight Hammond

Judge Michael Hogan, who is now retired, found that a five-year term would violate the constitutional prohibition against cruel and unusual punishment because it's "grossly disproportionate to the severity of the offenses here."

Dwight Lincoln Hammond, who was only convicted of the 2001 fire, received three months in prison, while his son was sentenced to one year, followed by three years of supervised release for each man.

Federal prosecutors challenged those sentences, and the 9th Circuit agreed that judges don't have the "discretion to disregard" such requirements.

The appeals court rejected claims by the ranchers' defense attorney that the federal arson statute was intended to punish terrorism, rather than burning to remove invasive species or improve rangeland.

At the Oct. 7 re-sentencing hearing, U.S. District Judge Ann Aiken said the ranchers cannot disregard the law in regard to setting fires on BLM property.

"You don't have the right to make decisions on public lands when they're not yours," she said.

Aiken compared the situation to "eco-terrorism" cases in which activists damaged property in reaction to environmental decisions with which they disagreed.

"They didn't necessarily like how the government was handling things, either," she said.

Similarly, people who violate hunting and fishing regulations are also subject to sanctions, Aiken said.

"The rules are there for a reason," she said.

Aiken said she would use discretion in sentencing the

Hammonds if she could, but that wasn't a possibility given the mandatory minimums and the jury's decision to convict them of arson.

"It wasn't a jury of people from Eugene, it wasn't a jury of people from Portland. It was a jury of people from Pendleton — your peers," she said.

Frank Papagni, the U.S. attorney who prosecuted the Hammonds, said the ranchers should be subject to the five-year sentence but disagreed with recommendations from the U.S. Probation Office that they receive even longer sentences.

The U.S. Probation Office said that Dwight Hammond should serve five years and three months, while Steven Hammond should serve six years and six months.

Papagni said those enhanced sentences were inappropriate because the fires didn't directly endanger the lives of nearby firefighters and hunters.

Nonetheless, the five-year terms are appropriate for the Hammonds' actions, he said.

Litigation attempts to sort out radish seed ownership between bank, farmers

By **MATEUSZ PERKOWSKI**
Capital Press

PORTLAND — Oregon farmers who are owed money for radish seed from an out-of-state company won't likely be paid for their 2014 crop until next year — if they're paid at all.

Throughout the year, numerous farms in Oregon's Willamette Valley have filed liens against Cover Crop Solutions, a

company based in Pennsylvania, for more than \$6.3 million worth of unpaid radish seed.

An oversupply of radish seed has apparently subjected to the company to financial difficulties.

Liens provide farms with collateral in the event of bankruptcy, but Northwest Bank of Warren, Pa., claims that it actually owns the seed because Cover Crop Solutions has defaulted on

a \$7.2 million loan.

The bank has filed a lawsuit against 41 Oregon farms, claiming that it has a priority security interest in the seed over the growers and therefore owns the crop.

"We believe they may have some interest in the seed, but it's definitely behind the bank," said James Ray Streinz, an attorney for the bank, during an Oct. 5 federal court hearing in Portland.

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