

Judge allows intervenors in lawsuit challenging GMO ban

Organic seed company, local group intervene in GMO lawsuit

By **MATEUSZ PERKOWSKI**
Capital Press

GRANTS PASS, Ore. — An organic seed company and an organization opposed to genetic engineering will be allowed to defend a prohibition against biotech crops in Oregon's Josephine County.

Circuit Court Judge Michael Newman ruled Nov. 4 that Siskiyou Seeds and Oregonians for Safe Farms and Families can intervene in a lawsuit that seeks to overturn the county's ban on genetically modified organisms.

The seed company should not have to wait to defend the ordinance until its crops are at risk of cross-pollination from GMO varieties, Newman said at a hearing in Grants Pass, Ore.

The judge also allowed OSFF, a group that campaigned for the ordinance, to serve as Siskiyou Seeds' co-defendant.

The company and OSFF argued that Josephine County's government won't defend the ban against genetically engineered crops, so they should be allowed to resist an attempt to overturn it.

The intervenors claimed that it would be prejudicial to exclude them from the lawsuit because the county doesn't appear willing to challenge a state law that pre-empts most local governments from regulating GMOs.

"This litigation won't be fully and fairly litigated by the existing parties," said Stephanie Dolan, an attorney for the

intervenor.

The group cited court documents filed by Josephine County, which raised no "affirmative defenses" of the ban on genetically modified organisms and did not question the legal standing of farmers who filed a case to invalidate the ordinance.

Robert and Shelley Ann White, who grew transgenic sugar beets, filed a complaint earlier this year seeking a declaration that the ordinance was pre-empted by a state statute passed in 2013.

In its answer to the complaint, Josephine County said it "takes no position" on whether the plaintiffs are entitled to a declaration that the GMO ban is unenforceable.

Instead, the county joined

the plaintiffs in a request that a judge decide whether the prohibition is valid, noting that the ordinance was passed by voters and not the county.

"We have to follow the law. What we want to know is what law: the county law or the state law," said Wally Hicks, attorney for Josephine County.

John DiLorenzo, attorney for the farmers who filed the case, said Siskiyou Seeds and OSFF weren't entitled to act as defendants.

"It has to be more than an interested person who wants the laws enforced," DiLorenzo said.

The U.S. Supreme Court rejected a similar bid by an anti-gay marriage group that wanted to defend a California initiative defining marriage as between a man and a woman, he said.

In that case, lawyers repre-

sending California decided the statute was legally indefensible, DiLorenzo said.

"I don't know why the county is not actively defending the (GMO) ordinance. It may be because it has come to the same conclusion as California's attorney general did," he said.

Don Tipping, owner of Siskiyou Seeds, hasn't shown "one scintilla of evidence" that his company was harmed by biotech crops, DiLorenzo said.

The GMO ban would not have prevented Tipping from buying corn seed that contained GMO traits, as occurred in the past, he said.

Tipping's decision to tear out a field of Swiss chard due to the proximity of a biotech sugar beet crop did not amount to harm either, he said.

"He dug it up himself without any evidence of harm,"

DiLorenzo said. "His interest is not real or probable. Rather, it is hypothetical or speculative."

Dolan countered that Tipping suffered a real injury, based on the economic damage he would have sustained from growing and harvesting a contaminated seed crop that was unsalable.

"Given our narrow valleys and the light pollen that can travel for miles, they're effectively prohibiting non-GE farmers from growing other crops such as Swiss chard," she said.

Litigation over the county ordinance should not be rushed, but instead the issue of whether state pre-emption is valid should be fully vetted, she said.

"At this stage, the challenge to the state seed law can begin," Dolan said. "The current parties are not going to fully litigate the constitutionality of state law."



Dan Wheat/Capital Press

Defect sorters work Gala apples on a Northern Fruit Co. packing line in East Wenatchee, Wash., Oct. 5. Smaller state and national crops than a year ago should help wholesale prices improve throughout the season.

Apple crop continues to shrink

Less fruit bodes well for wholesale price potential

By **DAN WHEAT**
Capital Press

WENATCHEE, Wash. — The Washington apple crop continues to shrink in size and national apple holdings are down all of which bodes well for wholesale prices.

Washington's fresh crop is now estimated at 116.2 million, 40-pound boxes, down about 1.5 percent from a month ago and about 18 percent from the final 2014 record season of 141.8 million boxes.

Washington apple marketers have sold 19.6 million boxes of apples compared with 23.6 million a year ago and that leaves 96.6 million boxes to sell throughout the year compared 118.2 million a year ago, according to the latest industry storage report.

Nationally, there are 117.3 million, 42-pound boxes in storage, a 19 percent decrease from record inventories a year ago, according to the U.S. Apple Association.

"That's very good for pricing. Things are certainly looking a lot better than at this

"It takes buyers a while to realize there are fewer apples around and that they have to pay more for them. So with this (storage) report, we will see prices strengthen."

Desmond O'Rourke,

retired Washington State University agricultural economist and industry observer

time last year," said Desmond O'Rourke, a retired Washington State University agricultural economist and industry observer.

Small size and quality problems caused by excessive heat in June has caused the crop to shrink since a 125.2-million-box Aug. 1 forecast, O'Rourke said.

Storability because of lesser quality from the June heat could be an issue, otherwise prices should continue to strengthen throughout the season, he said.

Last year's crop stood at 155 million boxes last Dec. 1 causing prices to tumble to \$9 a box for Reds which hadn't been seen in years and was far below breakeven. Companies shrunk the crop by increasing cullage and even dumping good apples.

Final sales of 2014 Red Delicious and quality have kept wholesale prices from rising, but prices have been holding steady and will increase when the old crop is gone, O'Rourke said.

Red Delicious is down one-third in volume from a year ago as are Braeburn and Cameo. Golden Delicious is down 26 percent.

The total Red Delicious crop is estimated at 26.3 million compared to 39.5 percent last Nov. 1.

"That will create a problem for the export market because prices will be higher and that will slow overall export sales," O'Rourke said.

The average Red Delicious asking price for extra-fancy grade, size 88, was \$16 to \$18.69 per box on Nov. 9,

according to USDA Market News. Size 100 and smaller was \$14 to \$16.90.

Gala was \$26 to \$28.90 for 88s and \$18 to \$22.90 for 100s and smaller.

"It takes buyers a while to realize there are fewer apples around and that they have to pay more for them. So with this (storage) report, we will see prices strengthen," O'Rourke said.

Harvest is basically done in Washington, New York and Michigan, the top three producing states.

Next to Red Delicious the top varieties in millions of boxes are: Gala, 18.4 down from 22.5 a year ago; Granny Smith, 15.9 up from 14.3; Fuji, 12.5 down from 15.0; Golden Delicious, 7.6 down from 10.3; Honeycrisp, 5.21 up from 4.3.

Wolf attacks calves in Klamath County

Tracking collar data shows OR-25 was at the attack site

By **ERIC MORTENSON**
Capital Press



Courtesy of ODFW

A calf was killed and eaten in Klamath County and two others were badly mauled in the first confirmed wolf attacks on livestock outside Northeast Oregon.

Tracking collar data showed a wolf designated OR-25 was at the attack site five times between Oct. 28 and Nov. 2. The calves were attacked in a 100-acre pasture on private land in the upper Williamson River area, according to Oregon Department of Fish and Wildlife.

OR-25 is a male wolf that dispersed from the Imnaha Pack and traveled through the Columbia Basin, southern Blue Mountains and northern and central Cascades. He's been in the Sprague wildlife management area of Klamath County since May, according to ODFW.

In August, the department designated the region an Area of Known Wolf Activity and encouraged livestock owners to take defensive measures, part of the process required under the Oregon wolf plan. The wolf wears a GPS tracking collar that emits a location signal to a computer at regular intervals.

The livestock attack comes as the ODFW Commission voted Nov. 9 to remove gray wolves from the state endangered species list.

The wolf and the Klamath County attack site are physically outside the state endangered species jurisdiction.

State Endangered Species

OR-25, a yearling male in the Imnaha Pack, is shown after being radio-collared on May 20, 2014. It has split from that pack and is now in Klamath County, where it recently attacked three calves, killing one.

Online

ODFW's depredation report:
http://dfw.state.or.us/Wolves/docs/dep_inv/151103_Klamath_Depredation_Report.pdf

Act protection applies to wolves east of Oregon Highways 395, 78 and 95, roughly the eastern one-third of the state. Federal ESA jurisdiction covers the rest of the state west of the highways.

Investigation of the Klamath County attacks began when an unidentified livestock producer reported finding an injured 350-pound heifer in the pasture Oct. 31, the carcass of a dead calf Nov. 1 and another injured calf Nov. 2. The injured calves had severe bite wounds and "massive tissue damage" to their hind legs, according to an ODFW report.

Of the carcass, "very little remained of the dead calf for examination," ODFW reported. The department confirmed a wolf was responsible for all three.

OR-25 is believed to be alone. The department has no evidence he has a mate or pups, said Michelle Dennehy, ODFW spokeswoman.

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