

Washington

Don't make farmers obtain a license to hire, Washington court urged

Case to define who's a farm labor contractor

By DON JENKINS
Capital Press

Every Washington farmer who leases land will need a state license to hire workers if the state Supreme Court affirms a federal judge's position, an attorney warned the state Supreme Court on Thursday.

The result would be a senseless but sharp distinction between farmers who own their land and those who lease it, with the renters facing an additional regulation, said David Salmons, representing the corporate landowners and former managers of three Yakima County apple orchards.

"You could have two farmers with orchards right next to each other engaged in the exact same activity," he said. "One would have to be a farm labor contractor and the other wouldn't, even though both only hire workers for their own operation."

"You can't be a farm labor contractor for yourself, you can only be a farm labor contractor for another."

David Salmons, representing the corporate landowners and former managers of three Yakima County apple orchards

The court heard oral arguments in Saucedo v. John Hancock Life Insurance, a 2012 class-action lawsuit that grew into arguments over the scope of the state's Farm Labor Contractors Act.

The act requires companies that recruit and hire out farmworkers to have a license from the Department of Labor and Industries and post a bond to ensure workers will be paid in the event the recruiter goes out of business and has no assets to file a claim against.

U.S. District Judge Thomas O. Rice ruled that the manager of the three orchards, Northwest Management Realty Services, should have had a license.

The landowners, Hancock and pension fund investor Texas Municipal Plans Consortium, were required under the law to make sure Northwest had a license, as was California-based Farmland Management Services, which was an intermediary between the landowners and farm managers, he ruled.

Rice made all of the defendants liable for paying 722 workers a total of \$1 million and their attorneys \$377,214.

The defendants appealed to the 9th U.S. Circuit Court of Appeals, which asked the state Supreme Court to interpret the state's law.

Salmons said L&I had never been applied the licensing law to managers paid a single fee to run all aspects of farming, including hiring for their farm only.

"You can't be a farm labor contractor for yourself, you can only be a farm labor contractor for another," he said.

Columbia Legal Services attorney Lori Jordan argued the law applied to Northwest because it was paid to hire workers and lacked the assets to ensure workers would be paid.

"They were a shell entity, with no resources of their own," she said.

Justice Debra Stephens asked whether the same could be said of individual farmers who lease land.

"Why do you presuppose they have the assets? They don't own the land. They probably don't own the equipment," Stephens said.

Jordan said the law doesn't apply to farmers who use their own foreman to hire.

"So this idea that all of a sudden every agricultural entity in the state of Washington is going to be covered (by the act) is simply not true," she said.

Salmons attacked claims by L&I that it always required farmer managers like Northwest to obtain a labor contractors license.

Northwest had been in business for about 30 years and L&I never brought up the subject, Salmons said.

"This was not a fly-by-night operation," he said. "It was well known to the Department of Labor and Industries and never did anyone suggest it needed a farm labor contractor's license."

He noted that L&I updated its website describing who needs a labor contractor's license after Judge Rice issued his ruling.

By then, Northwest was out of business, Salmons said.

"No one had any idea there was this requirement. Once it was brought up in this litigation, Northwest attempted to get (a license), was shut down by the department because of the pending litigation and was forced out of business," he said.

Farmland Management has posted a \$1 million bond, pending the case's outcome.

The court heard the arguments at the University of Washington's Bothell campus. Justices occasionally hold sessions outside Olympia to give the court wider public exposure. There is no timeline for the court to rule.

State helps wildfire victims buy hay

By DAN WHEAT
Capital Press

OKANOGAN, Wash. — The state has provided \$500,000 to help Okanogan County ranchers buy extra hay because of losses from 2015 wildfires.

It's a "godsend for some folks," but it's only one-sixth of the \$3 million local ranchers estimated in November that they would need to get through June or July of this year, said Craig T. Nelson, manager of the Okanogan Conservation District.

"If it helps pull them back from the edge, keeping them viable, it's done its purpose, but people are worried about the health of the livestock industry in Okanogan because of limited grazing. People are selling off livestock," Nelson said.

The Washington State Conservation Commission, in Olympia, issued a news release Jan. 15 announcing the funding and inviting ranchers to apply for it. But Nelson said the program was approved in mid-December, ranchers were well aware of it and the vast majority of dollars are already spoken for.

Applications may still be made at the district office or Ag Technologies in Okanogan.



Dan Wheat/Capital Press

Monte Andrews, owner of Ag Technologies, a feed store in Okanogan, Wash., is seen with donated hay for wildfire victims last Aug. 31. The state has now provided funding to help ranchers buy hay.

Producers were limited to 75 percent of their cost of purchasing hay and up to \$10,000 per round. Some made it to a second round, Nelson said.

A round is determined by a local committee of the district established to approve requests based on loss of hay and grazing forage, loss of grazing only, size of herd and whether assistance had previously been received, he said.

A round is basically when the committee worked its way through all the requests and ranchers started new purchases, he said, acknowledging it's a

loose system since some first-time requests came in after the second round started.

He said his staff was gone for the day and he did not know many ranchers are receiving money.

The money came from the state Department of Ecology through the Washington State Conservation Commission that oversees conservation districts, said Ron Shultz, commission policy director.

"To my knowledge, this hasn't been done before, at least in recent times. We have built critter paths and fencing near

Chehalis in recovery of floods, but buying replacement feed is a new thing," he said. "We are trying to meet real needs of landowners."

The idea originated with the Washington Department of Fish and Wildlife's Wolf Advisory Group to help prevent any increasing interactions between cattle and wolves because of the loss of grazing ground, Shultz said.

The appropriation was approved by DOE and WSCC without legislative action, Shultz said. Funding is limited to 2015 victims but the governor's supplemental budget request includes \$8.8 million for fire recovery that includes fencing, re-seeding of grass and other costs related to the 2014 fires, he said.

The action was praised by Reps. Joel Kretz, R-Wauconda, who is an Okanogan rancher, and Steve Tharinger, D-Dungeness, chair of the House Capital Budget Committee.

A couple dozen ranchers have lost the ability to graze thousands of acres of rangeland in Okanogan County because of wildfires the past two summers that burned more than 1 million acres. Many are hard-pressed to find spring, summer and fall grazing.

Dairy industry disputes need for safety bill

House committee holds hearing

By DON JENKINS
Capital Press

OLYMPIA — Farm groups Monday defended the safety record of dairies, arguing that advocates of new safety measures are exaggerating workplace dangers.

"The claims are inconsistent with the facts," Washington State Dairy Federation policy director Jay Gordon said.

The House Labor and Workplace Standards Committee held a hearing on House Bill 2484, legislation motivated in part by the drowning of dairy worker Randy Vasquez last February



Don Jenkins/Capital Press

Alberto Garcia of Sunnyside, Wash., stands Jan. 18 on the Capitol Campus to support legislation that would require dairies to adopt state-prescribed safety measures.

in Mabton.

Vasquez, 27, was found dead in a front-end loader submerged in a manure lagoon. Vasquez had metham-

phetamine in his system, according to the Yakima County coroner.

"This particular incident is not a dairy problem. It's a drug problem," said Gordon, a Grays Harbor County dairy farmer.

The bill's sponsor, Rep. Brady Walkinshaw, D-Seattle, said he was more motivated by Department of Labor and Industries statistics. According to L&I, 11 dairy workers have been killed since 2000.

The bill would require all dairy workers to undergo safety training and for dairies to adopt state-prescribed safety measures, such as marking, lighting and fencing lagoons.

Workers who alleged safety violations would have whistle-blower protection, and dairies would be subject to

spot inspections and substantial fines for violations.

L&I has not taken a position on the bill.

The measure has little chance of passing this year, especially in the Republican-controlled Senate. Walkinshaw, who said he grew up in a part of Whatcom County with many dairies, said he will continue to pursue the issue.

"I hope it's the beginning of an important conversation. We aren't going to solve this in 2016," he said.

In 2014, out of every 100 dairy workers, 2.7 suffered an injury serious enough to miss at least three days of work, an injury rate nearly double compared to all occupations, but 20 percent lower than construction workers, according to L&I.

Pacific Northwest stripe rust outlook 'moderate'

By MATTHEW WEAVER
Capital Press

Wheat farmers will face a moderate threat from stripe rust this year, a Pacific Northwest expert says, meaning an early application of fungicide to ward off the disease may not be necessary.

USDA Agricultural Research Service research geneticist Xianming Chen's early forecast indicates that highly susceptible winter wheat varieties in the Pacific Northwest could have about 30 percent

yield loss. That's considered a "moderate" level of stripe rust.

Most commercial wheat cultivars grown by farmers typically experience up to half the loss of highly susceptible varieties, Chen said.

Last year's forecast was for roughly 35 percent yield loss in highly susceptible varieties.

Increased winter moisture doesn't have a bearing on rust survival, Chen said. "Because the temperature is very low, rust does not grow," he said.

Rust infections need a temperature above 23 degrees Fahrenheit during the winter to survive. Colder weather kills rust in the leaf tissue, Chen said.

An early application of fungicide at the time of herbicide application for winter wheat will generally not be necessary for growers, he said.

Last year, Chen used only one application of fungicide on his test field near Pullman, Wash., but may require two this year. Chen said a second application would have helped control the rust completely. A second application depends on weather conditions, and would come during the wheat flowering stage, Chen said.

If weather conditions favorable to stripe rust occur,

yield loss could be higher, Chen said.

Chen will make another forecast in early March based on the winter weather conditions. He said it will be more accurate than his early forecast.

According to his report, no rust was observed in Washington's Whitman, Adams, Lincoln, Grant and Benton counties in November. But Chen received stripe rust samples from volunteer wheat and grasses from southern Idaho in late October and early November.

Chen recommends farmers select wheat varieties that are highly resistant to stripe rust. Farmers should compare a variety's rust resistance against its yield capabilities and adaptation to the area, he said.

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