Oregon farm regulators overrule judge on pesticide finding

Legal dispute pertains to fines and license suspension for applicator

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Oregon farm regulators have proposed overruling an administrative judge's findings that the emergency suspension of an aerial pesticide applicator's license was unwarranted.

The looming decision marks the latest turn of events in the legal battle between the Oregon Department of Agriculture and Applebee Aviation, which faces steep fines for allegedly ignoring the agency's order to stop spraying pesticides.

If ODA does overrule the administrative judge — who recently found that the emergency suspension wasn't based on sufficient evidence — the dispute may end up before the Oregon Court of Appeals.

In September 2015, ODA yanked the pesticide license of Applebee Aviation after finding the company improperly trained its workers, didn't provide them with the appropriate protective gear and otherwise "performed pesticide application activities in a faulty, careless or negligent manner."

Ordinarily, pesticide applicators can continue operating while challenging a license suspension through the administrative process, but in this case, ODA found that an emergency suspension was warranted, which allowed the agency to yank the license before a hearing was held.

The emergency suspension is significant because ODA alleges that Applebee Aviation continued spray operations without a license, which led to the agency issuing $180,000 in civil penalties to the company and its owner, Mike Applebee.

In January, Senior Administrative Law Judge Monica Whitaker found that ODA did not prove that Applebee's conduct posed a "serious danger to the public's safety or health," and thus the emergency suspension was unjustified.

The administrative judge said the agency's findings were based solely on the testimony of one former Applebee employee, Darryl Ivy, whose photos and other testimony were not verified.

Ivy was admitted to a hospital after quitting his job in April 2015 and then went public with allegations of hazardous spraying practices against his former employer.

The ODA has now amended the judge's proposed order, deleting paragraphs that questioned the authenticity of Ivy's accusations and removing the recommendation that the emergency suspension be revoked.

Instead, the agency's proposed order finds that license suspension was justified between Sept. 25 and Oct. 8 of last year.

Whether the emergency suspension was justified is important to Applebee Aviation, as it bears on the legality of spray operations during that period and the ensuing $180,000 in fines.

Bruce Pokarney, communications director for ODA, said he can't comment on the substance of the dispute but said the agency will consider any objections by Applebee Aviation to the amended order before making it final.

ODA is seeking a five-year license suspension for the company, as well as the civil penalties, which will be weighed by an administrative judge on Feb. 17-18, he said.

Robert Ireland, attorney for Applebee, said the company will likely take the legal fight to the Oregon Court of Appeals if ODA insists the emergency license suspension was justified.

The suspension has forced Applebee Aviation to cease spraying operations, which has cost 30 people their jobs, Ireland said.

Applebee Aviation believes that Ivy's testimony was not credible, which is why the ODA did not call him as a witness under oath, he said.

Ireland said the ODA had the legal right to overrule the administrative law judge's findings, but the extent of the changes was an abuse of its authority.

"They're covering their tracks on a poor investigation," he said.

Otter requests more aquifer stabilization funding

By JOHN O'CONNELL
Capital Press

BOISE — Idaho Gov. Butch Otter has increased his funding request for Eastern Snake Plain Aquifer stabilization efforts, after leaders within the Legislature and state irrigation managers questioned if his original proposal was sufficient to meet state goals.

Under the revised terms of Otter's Fiscal 2017 budget request, the state would make a $16.5 million one-time payment — up from his prior request of $10 million — toward aquifer stabilization efforts.

He also proposed $5 million in annual payments toward reversing a trend of declining groundwater levels, up from his prior request of $2 million.

His proposal would provide revenue from the state's general fund to replace the $5 million in cigarette tax revenue the state has allocated for aquifer stabilization efforts, such as managed recharge, during each of the past two years.

The state has committed to averaging 250,000 acre-feet of annual recharge — intentionally injecting surface water into the aquifer — to help make a recent water call settlement between junior groundwater users and surface users represented by the Surface Water Coalition a success.

The groundwater users have agreed to reduce their well consumption, or offset it through their own recharge projects, by about 240,000 acre-feet per year, hoping to stop groundwater declines and gradually rebuild depleted aquifer levels.

Officials with the Idaho Department of Water Resources estimated in October that it would take $30 million to cover construction of infrastructure needed for Idaho to increase its recharge capacity and meet its goal, plus another $3 million in ongoing funds to finance maintenance and "wheeling fees" paid to canal companies that run the state's water through their unlined canals or into special spill basins to bolster the aquifer.

In his Jan. 25 letter to the Idaho Legislature's Joint Finance-Appropriations Committee, Otter wrote, "After additional discussions with the IDWR on the funding necessary to meet the state's commitment under the settlement agreement for the Eastern Snake Plain Aquifer, I am revising my budget recommendation to fully fund its accelerated implementation."

Brian Olmstead, manager of Twin Falls Canal Co., said his board discussed the previous "light" budget request during a recent meeting, and the new proposal should provide water users the means of sustaining and restoring the aquifer.

In a press release, Idaho Water Resource Board Chairman Roger Chase described the decision to step up the funding request as "monumental."

"Future generations of Idahoans will look at this effort to sustain and protect Idaho's future water needs as one of the state's most important water decisions," Chase said.

Dan Wheat/Capital Press

Workers prune fruit trees in an East Wenatchee, Wash., orchard on Jan. 14. Pruning was slowed this year by more snow than usual.

Snow hampers tree-fruit pruning in Washington state

By DAN WHEAT
Capital Press

CHELAN, Wash. — It's cold work anyway, but this winter fruit tree pruning is slowed by more lowland snow than Central Washington has seen in years.

"As snow accumulates and gets deeper, it slows things down significantly," says Harold Schell, director of field services at the Chelan Fruit Cooperative.

Still, he says, it shouldn't be a problem because spring most likely will be a little late, giving growers more time to prune.

"The past three years in a row, we've had abnormally warm and early springs and less lowland snow," Schell said. "It makes things heat up sooner."

Bud development should be slowed by snow helping keep temperatures lower longer. Growers in the region start pruning when trees go dormant in mid- to late November and like to be done by the end of March in time for the first delayed dormant sprays around April 1 to combat various pests.

Pruners normally don't work when it's snowing or raining because it's pretty miserable and not as safe. Deep snow makes it harder to move ladders.

"Guys are still out after it, trying to prune," Schell said. "It's just a little more effort, harder to do."

Pruning has been shut down more days because of weather, said Brent Milne, assistant manager of company orchards for McDougall & Sons Inc., Wenatchee. The industry is probably a little behind in pruning, he said.

Snow is a bigger issue in higher elevation orchards and for McDougall & Sons that's been at Monitor near Wenatchee and Bray's Landing, between Orondo and Chelan.

"From our standpoint it's not slowed us down, but may slow down our clean up, mowing the prunings," he said.

For the second year in a row, McDougall & Sons is supplementing its pruning crews with H-2A-visa foreign guestworkers. The company has more than 300 domestic and foreign workers to prune about 2,900 acres from Mattawa to Bridgeport.

Bob Allen, a grower at Naches Heights west of Yakima, said he got a good start on pruning after harvest so he's not as far behind as some.

He has 10 workers to prune 135 acres of apples and six acres of pears.

"We're nearly on schedule," he said. "I have a close associate that's significantly behind because he's had trouble finding workers."

Ecology: Don't make us name informants

By DON JENKINS
Capital Press

OLYMPIA — Anonymous tipsters help the Washington Department of Ecology identify farmers and ranchers who are polluting water, a DOE representative said Tuesday, testifying against a bill that would force the department to reveal the names of whistle-blowers.

Accusers could face intimidation and reprisals, discouraging on-the-ground informants that the department relies upon, DOE Special Assistant Kelly Susewind told the Senate Agriculture Committee.

"We're concerned this bill will create an obstacle to achieving clean water," he said.

Senate Bill 6551 would require DOE to name the accuser if the allegations led to the department finding violations of water-pollution laws. The legislation would bar DOE from following up on tips from people who didn't leave their name with the department.

The bill's prime sponsor, Agriculture Committee Chairwoman Judy Warnick, said farmers have been blindsided by anonymous complaints. The Moses Lake Republican said her bill was upholding a bedrock American principle.

"In this country, we have a right to face our accuser," she said.

Don Jenkins/Capital Press

Senate Agriculture Committee Chairwoman Judy Warnick, R-Moses Lake, speaks Feb. 2 at a hearing in Olympia. The hearing included testimony on a bill Warnick introduced that would bar the Washington Department of Ecology from investigating anonymous complaints that farmers or ranchers are polluting water.

The proposal received a hearing in the Republican-led Senate, but is unlikely to be embraced in the Democratic-controlled House.

Nevertheless, the hearing was a forum to air complaints that producers are vulnerable to anonymous complaints, including flimsy accusations from disgruntled neighbors, that set off unnerving government investigations.

"It's definitely on the mind of many people involved in agriculture," Washington Cattlemen's Association Executive Vice President Jack Field said.

Washington Farm Bureau lobbyist Evan Sheffels called Warnick's proposal an "excellent bill."

He said nobody should feel bullied. "And that's exactly how our members feel when they get an anonymous complaint," he said.

Susewind said anonymous tips only start probes.

"We don't act on a complaint, anonymous or otherwise, without verifying the problem ourselves," he said.

Environmental lobbyist Bruce Wishart said letting tipsters remain anonymous was "absolutely critical" because of the threat of retaliation.

"It's often neighbors and people within the community who witness, experience the harm from the water-quality who are reporting the harm," said Wishart, representing the Sierra Club and Puget Soundkeeper Alliance.

Warnick's proposal received bipartisan sympathy from the committee. Sen. Dean Takko, a Longview Democrat, said producers can be victimized by baseless complaints.

U.S. cattle inventory, Jan. 1

Item	(1,000 head) 2015	2016	Percent change
Cattle and calves	89,143	91,988	3
Beef cows and heifers that have calved	29,302.1	30,330.8	4
Replacement beef heifers	6,086.4	6,285.2	3
Replacement beef heifers expected to calve	3,712.1	3,924.6	6

Item	(1,000 head) 2014	2015	Percent change
Calf crop	33,522	34,301.7	2

Source: USDA NASS Capital Press graphic

U.S. posts strong beef cattle numbers

By CAROL RYAN DUMAS
Capital Press

USDA's annual Jan. 1 cattle inventory report validates continued expansion in the U.S. beef herd in 2015, but significant revisions to last year's tally shows growth in 2014 was not as aggressive as previously reported.

The latest roll call of all beef and dairy cattle and calves, at nearly 92 million head, is up 2.845 million head and 3.2 percent year over year, according to the report.

The number of dairy cows was up 8,500 and the number of dairy replacement heifers was up 114,000, leaving the bulk of the increase to the beef herd, according to the National Agricultural Statistics Service.

While the report confirms the cattle inventory grew in 2015, the increase also reflects USDA's revisions to the Jan. 1, 2015, numbers, said Derrell Peel, extension livestock marketing specialist with Oklahoma State University.

"They were pretty significant revisions and pretty comprehensive revisions. You really have to tell a two-year story now to get this report right," he said.

The magnitude of the revisions is "really frustrating" to market analysts, who have been using one set of numbers all year only to find out they're all wrong. And the agency's revisions are becoming more frequent and more substantial, he said.

"In the really big picture, it (revised numbers) doesn't change things a great deal, it just shifted more of the growth into 2015 from 2014. We still had growth in 2014, but less than we said a year ago," he said.

The Jan. 1, 2015, report showing aggressive expansion surprised most analysts. But it turns out it wasn't as vigorous as NASS reported, Peel said.

USDA revised the total number of cattle and calves in 2014 lower by 650,000 head, implying that growth in 2014 was 0.7 percent rather than the 1.4 percent previously reported, Peel said.

In the long-term picture, it showed cattle were even tighter than anyone thought, and the industry has further to go in rebuilding than people were thinking, he said.

This year's increase in total inventory was larger than expected, but it takes into account that downward revision. The industry still needs an additional 1 million to 1.5 million head to be where it needs to be at this point in balancing supply and demand, he said.

Rounding the numbers in the latest count, NASS also reported a 3 percent increase in both beef cows and beef replacement heifers and a 6 percent increase in those heifers that are expected to calve in 2016.

Cattle on feed in large feedlots, at 13.2 million head, were reported up 1 percent, compared with only a slight increase reported a week earlier. Feeder cattle supplies outside feedlots, at 29.5 million head, are up 5 percent, and the 2015 calf crop is estimated at 34.3 million, up 2 percent.

All of those numbers also reflect significant revisions in year-earlier numbers, Peel said.

The Jan. 1, 2015, beef cow number was revised down 400,000 head, putting growth in that sector in 2014 at 0.7 percent as opposed to the 2.1 percent previously reported, he said.

But an even bigger surprise was in the number of beef replacement heifers. The Jan. 1, 2015, number was revised up 300,000 head, indicating beef heifers increased 9.6 percent as opposed to the previously reported 4.1 percent increase, he said.

That 9.6 percent increase is the largest year-over-year increase in beef heifers since 1974, he said.

Were that number known, it probably would have had an impact on heifer and bred cow prices and set up the idea that a bigger jump in the cow herd could be ahead with an even bigger calf crop in 2016, he said.

The Jan. 1, 2015, numbers on heifers other than replacements, steers and calves under 500 pounds were also revised, resulting in a feeder cattle supply outside feedlots that was down 1.9 percent as opposed to being up 0.5 percent as previously reported.

So NASS was saying we had a bigger feeder cattle supply than we really did, Peel said.

"That probably had some impact on the market, but it's hard to go back and revise history," he said.

NASS estimates the 2016 feeder supply outside feedlots at 25.9 million head, up sharply by 5.3 percent year over year.

"That sets up the idea we'll see a significant increase in cattle coming into feedlots," Peel said.

The significant increase is likely a factor of not placing those expensive feeder cattle into feedlots in the fourth quarter and an indication of delayed movement, as opposed to a lot of extra cattle out there, he said.