

Lawyers square off over Josephine County GMO ban

By MATEUSZ PERKOWSKI
Capital Press

GRANTS PASS, Ore. — Farmers seeking to overturn the ban against genetically engineered crops in Oregon's Josephine County have come under fire in court from proponents of the ordinance.

An April 14 court hearing over the validity of the county's prohibition largely centered on whether the plaintiffs even have the right to challenge it.

"If you look at the circumstances, the whole house of cards of this manufactured lawsuit comes tumbling down," said Stephanie Dolan, an attorney representing ordinance supporters, during oral arguments.

The fundamental dispute in the lawsuit is whether state law overrules the county's prohibition against genetically modified organisms, or GMOs.

Oregon lawmakers pre-empted most local GMO regulations in 2013 but Josephine County voters nonetheless approved a ballot initiative banning such crops the following year.

Landowners Robert and Shelley Ann White filed a lawsuit challenging the GMO ordinance shortly before it was set to become effective in September 2015.

While the county government decided not to defend the ordinance, proponents of the ballot initiative — Oregonians for Safe Farms and Families



The court dispute over whether Josephine County, Ore., can ban the cultivation of genetically modified crops was heard April 14 in Grants Pass.

and Siskiyou Seeds — voluntarily intervened in the case as defendants.

Those intervenors now claim the lawsuit should be thrown out because the Whites are "hobby farmers" who were "hand-picked" to serve as plaintiffs by biotech lobbyists intent on overturning the will of Josephine County voters.

The Whites say they've been prevented from growing biotech sugar beets on leased property.

They've asked Circuit Court Judge Pat Wolke to declare that the GMO ordinance is invalid and to permanently enjoin its enforcement.

Supporters of the GMO ban have responded by attacking the Whites' legal standing to file the lawsuit.

During the oral arguments, the intervenors cast doubts on harm suffered by the Whites because of the ordinance.

"They need more than their general disdain for this ordinance to get into court," said Melissa Wischerath, attorney for the intervenors.

In reality, the couple hasn't proved it holds a valid contract with biotech developer Syngenta, which would be necessary to grow GMO sugar beets, according to the intervenors.

The Whites' lease agreement to 100 acres, where the crop was supposedly going to be planted, is also not valid, the intervenors claim.

Since they have not demonstrated an actual financial hardship from the GMO ordinance, they cannot challenge its legal-

ity in court, Wischerath said.

"The mere interest in the subject matter — like the idea they'd like to grow GE crops — is not sufficient," she said.

The couple's financial loss was "purely hypothetical" because they likely could have earned as much money from continuing to grow hay on the property or by switching to organic sugar beets, intervenors argue.

"Really all they have is a hope to grow GE crops someday in the future," said Wischerath.

John DiLorenzo, attorney for the plaintiffs, countered that these allegations are both false and irrelevant.

"The Whites have shown much more than is necessary to show their standing," he said.

Syngenta did contract with the couple to grow biotech sugar beets in previous years but did not enter into a new contract due to the GMO ordinance, he said.

As for the lease agreement, it remains valid even if there's no expiration date and the landowner is willing to renegotiate payment terms, DiLorenzo said.

Regardless of whether they can prove a financial hardship, plaintiffs can still seek to invalidate a regulation that affects them under Oregon law, he said.

"They're affected by the ordinance as it's applied. Nothing further is required," he said. "It does not matter how much they might have made if they'd been allowed to grow GMO crops."

Apart from the question of standing, the parties also debated whether the 2013 statute that pre-empts local GMO restrictions runs afoul of Oregon's constitution.

"We contend that law is unconstitutionally vague," said Dolan.

Lawmakers impermissibly disallowed local rules for GMOs without creating a statewide scheme for governing such crops, she said.

"What we're left with is a regulatory void," Dolan said.

The pre-emption statute doesn't contain any protections for organic and conventional farmers, she said.

"The law instead creates a novel vacuum," she said.

The plaintiffs argued that

a statewide regulatory system isn't necessary to pre-empt local restrictions on GMOs — it's sufficient that lawmakers didn't want Oregon's 36 counties to establish their own GMO rules.

Oregon also pre-empts local governments from enacting rent controls or regulating shooting ranges, among other issues, DiLorenzo said.

"It is the legislature's right to trust in the market sometimes," he said.

Intervenors drew a parallel between Oregon's pre-emption statute and a law that was struck down in Ohio, which prohibited local restrictions on the foods that can be served at restaurants.

An appellate court in Ohio overturned that law because the state didn't establish its own regulations over food content in restaurants. Supporters of the GMO ordinance say that the current test of Josephine County's "home rule" authority is a unique case of "first impression" in Oregon, so the Ohio case should guide the judge's thinking.

"It's persuasive and strikingly similar," Dolan said.

DiLorenzo said the Ohio decision has no bearing on the situation because Oregon has different legal standards for when the state can pre-empt local regulations.

In Ohio, lawmakers must cross several additional hurdles in passing a statute that can pre-empt local ordinance, he said. "Oregon's home rule authority is not as extensive."

Oregon onion growers receive permission to apply herbicide through drip systems

By SEAN ELLIS
Capital Press

ONTARIO, Ore. — Onion growers in Malheur County in Eastern Oregon have joined their Idaho counterparts in receiving special permission to apply an important herbicide through drip irrigation systems.

Idaho growers who produce Spanish bulb onions received permission from the Idaho State Department of Agriculture this month to

apply the Outlook herbicide through drip systems, and the Oregon Department of Agriculture granted onion growers in Malheur County the same permission April 12.

Outlook, produced by BASF, was already approved for surface application in Idaho and Oregon bulb onion fields but it wasn't previously approved for use in drip systems in onion fields.

Onion growers in Idaho and Oregon say Outlook is one of their best tools for con-

trolling the yellow nutsedge weed, which is their top weed challenge and can reduce yields by as much as 60 percent.

Two years of field trials by Oregon State University researchers in Malheur County showed Outlook is a lot more effective in controlling the yellow nutsedge weed when applied through a drip system.

About 60 percent of the 20,000 acres of Spanish bulb onions grown in this region are irrigated through drip systems.



Onions are sorted at a packing-shipping facility in Southwestern Idaho last year. More onion shippers in this region are conducting their own marketing and promotion efforts after the onion assessment was cut in half last year.

Sean Ellis/Capital Press

House ag chairman wants EPA records about What's Upstream

By DON JENKINS
Capital Press

The chairman of the U.S. House Agriculture Committee is pressing the Environmental Protection Agency to explain its role in What's Upstream, making the most detailed request yet for records related to an advertising and social media campaign to influence Washington state pollution-control laws.

U.S. Rep. Mike Conaway, R-Texas, sent a letter Tuesday to EPA Administrator Gina McCarthy requesting by April 29 documents about the agency's communications with the Northwest Indian Fisheries Commission and Swinomish Indian tribe.

The northwestern Washington tribe used EPA grants obtained through the fisheries commission to hire a public relations firm to develop a campaign advocating stricter state limits on farming near waterways.

EPA monitored the campaign's development and implementation for more than four years, but withdrew its support April 5, the same day two U.S. senators called for an investigation. Although EPA said it would take corrective actions, the campaign has continued.

An ad April 14 on an online news site promoted the What's Upstream website. The ad states: "Unregulated agriculture is putting our waterways at risk." It does not disclose EPA's financial support, an apparent violation of the terms of the grant received by the fisheries commission.

Conaway called the EPA-funded advocacy campaign troubling, but added that he was more concerned about whether there was a "broader pattern of mismanagement of

federal funds at EPA."

He referred to previous government findings that EPA has engaged in covert propaganda nationally and has been lax in overseeing how grants are spent in Washington state.

The EPA did not have a response to Conaway's letter. Efforts to obtain comments from the fisheries commission and tribe were unsuccessful.

Chris Wilke, director of Puget Soundkeeper, one of several environmental groups connected to What's Upstream, staunchly defended the campaign, including its website.

"I would say the overall point of the website is to provide a resource for fact-based solutions," he said. "Nobody is doing this as an attack on farmers. We want them to succeed."

"I have zero regrets about participating in this project," Wilke said. "I have a regret the agriculture industry hasn't responded more constructively."

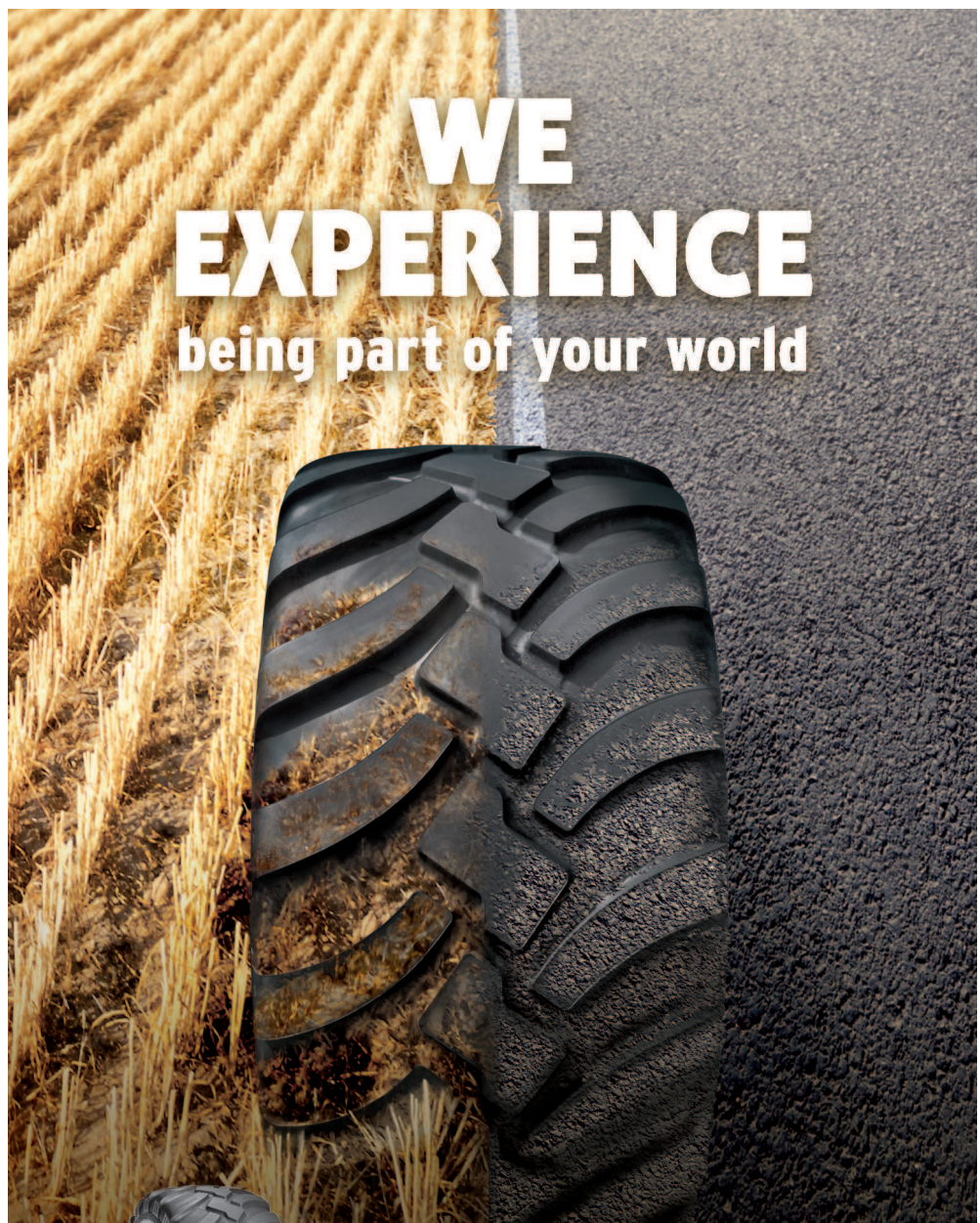
... We have a powerful industry playing the victim."

Farm groups and some lawmakers say they see What's Upstream as an underhanded and thinly disguised lobbying campaign.

The campaign's imagery got more attention when Todd Myers, a policy analyst for the conservative-leaning Washington Policy Center, noted in a blog post that the photo on What's Upstream billboards was from a stock photo service and was labeled, "Amish Country Cows in Stream."

Another stock photo of cows in a stream on the campaign's website was taken by a British nature photographer. The location is not identified. Efforts to contact the photographer were unsuccessful.

Other What's Upstream images include photos of brown water and dead fish, without information about where the photos were taken or the circumstances.



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