

Pending Idaho Supreme Court ruling could ease Rangen water call burden

By JOHN O'CONNELL
Capital Press

HAGERMAN, Idaho — Officials of Idaho Ground Water Appropriators Inc. say they hope a forthcoming state Supreme Court ruling will ease their burden in the Rangen Inc. water call and provide a means for them to resolve other looming calls in the area.

Idaho Department of Water Resources Director Gary Spackman determined junior Eastern Snake Plain groundwater users owe the Hagerman trout farm 9.1 cubic feet per second of spring water due to spring-flow depletions caused by their wells.

Since February 2015, IGWA has piped water to Rangen from the nearby Magic Springs trout farm to fulfill its obligation. IGWA estimates power and operating expenses of the pipeline at up to \$100,000 per year.

However, the Supreme Court ruled on Feb. 29 that Rangen has been illegally diverting up to 12 cfs from the Bridge Diversion of Billingsley Creek for more than 50 years.

Rangen attorneys argued the hatchery's decreed water right, called Martin-Curren Tunnel, refers to the entire spring complex across a canyon wall. The Supreme Court affirmed that it refers only to a specific 10-acre tract, as confirmed during the Snake River Basin Adjudication process.

"It is undisputed that the Bridge Diversion lies outside of the decreed tract," the ruling reads.

IGWA has filed on the water right, hoping to grant Rangen continued use of the Bridge Diversion to meet the water call shortfall, said IGWA Executive Director Lynn Tominaga.

IGWA attorney Randy Budge said IGWA is engineering various alternatives to redirect water now supplied

to Rangen to satisfy other potential calls. For example, the pipeline could be rerouted to Sandy Pond — a small re-regulating reservoir that supplies water to the Curren Ditch, serving irrigators mulling calls against IGWA, including one farm with an 1893 surface right.

IGWA has been providing irrigators along the Curren Ditch water that flows into Sandy Pond from Northside Canal Co.'s operational spills, but fears that supply isn't reliable, as the company has prioritized running its system more efficiently.

The Supreme Court is expected to rule soon on the validity of IGWA's application for the Bridge Diversion water right, which was denied by Spackman and subsequently upheld by Fifth District Judge Eric Wildman on appeal.

Rangen attorney Fritz Haemmerle, who wasn't available for comment for this story, previously told Capital Press there's case law against water diversion by an applicant who doesn't own the surrounding land or have the owner's permission, and IGWA would need condemnation authority to access the diversion.

Tominaga said IGWA has delivered mitigation water in the past where it didn't own land at the diversion.

In a separate April 26 ruling, the Supreme Court upheld the district court's decision affirming IGWA's pipeline as a valid mitigation plan. Rangen had argued the plan lacked adequate contingency provisions.

Furthermore, Rangen contended Spackman erred by offering to lift IGWA's obligation if it didn't allow construction of the pipeline, and by failing to first evaluate the pipeline's impacts on other senior rights.

"Rangen brings a delivery call that claims they're short of water, yet Rangen has fought every effort to deliver them water," Budge said.

Labor contractor held liable for \$7.7 million

Federal government may seek to resurrect charges against farms

By MATEUSZ PERKOWSKI
Capital Press

A labor contractor owes nearly \$7.7 million to foreign guestworkers for committing "malicious" labor law violations, but the federal government faces new challenges in collecting the money.

Senior U.S. District Judge Edward Shea in Spokane, Wash., has ordered Global Horizons to pay 67 Thai farmworkers roughly \$20,000 for each month they were employed under the H-2A visa program.

Some of the employees are entitled to additional payments for physical injuries or being detained by law enforcement because their passports had been confiscated by the labor contractor, Shea said.

The compensatory and punitive damages were based on abuses for which the judge held Global Horizons responsible, such as forcing them to live in "virtually uninhabitable" housing, threatening to send them back to Thailand for complaining, and subjecting them to insults.

The judge entered a "default judgment" against Global Horizons, which ceased defending itself in court last year due to a lack of funds.

The California-based labor contractor was initially accused of criminal human trafficking charges by the federal government more than five years ago.

The U.S. Equal Employment Opportunity Commission also pursued civil litigation against the company for alleged discrimination, harass-

ment and retaliation against the workers, who worked on farms in Washington state and Hawaii.

The criminal charges against the company's owner, Mordechai Orian, and several managers were dropped in 2012 because the government admitted it could not prove the human trafficking allegations beyond a reasonable doubt.

Anna Park, regional attorney for the EEOC, said the U.S. Department of Justice was still trying to enforce an \$8.7 million judgment entered against Global Horizons by a federal judge in Hawaii.

It's likely that the federal government will have to go through a similar process for the \$7.7 million judgment recently won by the EEOC in Washington, she said.

The government may be able to seize other business assets of Orian, the owner, if it can prove another company served as his "alter ego," Park said.

An attorney for Global Horizons refused to comment on the case.

Last year, the judge ordered EEOC to pay nearly \$1 million in attorney fees to two Washington farms — Valley Fruit Orchards and Green Acre Farms — that he found the agency had accused of "baseless, unreasonable and frivolous" labor violations.

Shea cited several failings in the EEOC's investigation of the farms in rulings that dismissed the charges against them and held the agency liable for their attorney fees, according to the ruling.

Now that the overall lawsuit is over, the EEOC can challenge his findings before the 9th U.S. Circuit Court of Appeals, said Park. "In the past, when there has been something like this, we have routinely appealed."

Oregon ag department finishes gypsy moth spraying in Portland

By ERIC MORTENSON
Capital Press

PORTLAND — Government helicopters spraying pesticides over funky neighborhoods in a liberal city would seem a recipe for outrage.

But the Oregon Department of Agriculture completed its gypsy moth eradication campaign over North Portland May 2 without much protest or hubbub. A few people were concerned about the spraying but opposition was "scattered," department spokesman Bruce Pokarney said.

"I would say the vast majority of people inside the treatment zone either were happy with what we were doing or at least accepted what we were doing," Pokarney said.

The department sprayed about 8,800 acres three times since April 16, using aerial applications of a biological insecticide called *Bacillus thuringiensis* var. *kurstaki*, or Btk, which kills moth larvae. Gypsy moths, an invasive species, can do horrendous damage to trees, and Btk has been the insecticide of choice since the 1970s.



Courtesy of Oregon Department of Agriculture

A helicopter sprays a biological insecticide during a gypsy moth operation in North Portland that ended May 2. Oregon ag officials believe a public information campaign dampened opposition.

Monday's final application involved the St. Johns, West Hayden Island and Linnton areas, a portion of Forest Park, and an industrial area of the Port of Portland. The department also sprayed at the Port of Vancouver, across the Columbia River from Portland, under an arrangement with the Washington Department of Agriculture. The Washington department carried out its own gypsy moth campaign involving 10,450 acres, including parts of Seattle and Tacoma. The department intended

to finish May 3.

Pokarney, of the Oregon ag department, said the lack of widespread protest may be due to a couple factors. First, Btk has been used for decades and is widely viewed as effective and safe, he said.

But a public information campaign was crucial, he said. The department held neighborhood meetings, invited comments, arranged for residents to receive project information by automated calls or text messages, and took to Facebook and other social

media to explain the operation.

"I think there's a direct correlation between the amount of transparency in this project and the opposition we faced," Pokarney said. There were a few glitches — some people who signed up for automatic notification of spraying didn't receive it — but overall the public seemed to accept the project.

"There's now an expectation of transparency of what government is doing," Pokarney said. "You tell them what you're going to do, how you're going to do it, and allow them to ask questions. That's the bare minimum now."

The department will place monitoring traps in the area this week and check them over the summer to make sure gypsy moths haven't returned, he said.

Last summer, three Asian gypsy moths and two European gypsy moths were detected in the Portland area, including one Asian gypsy moth on the Washington side of the Columbia. Oregon hadn't sprayed for them since 2009, Pokarney said.

Cherry expansion faces uphill road

By DAN WHEAT
Capital Press

WENATCHEE, Wash. — Plans to develop more cherry orchard high in Stemilt Basin near Wenatchee continue to face strong opposition and are straining a community conservation group known as the Stemilt Partnership.

West Mathison, president of Stemilt Growers LLC, one of the largest tree fruit companies in the state and likely the largest sweet cherry grower in the world, explained his cherry orchard development plans at a Stemilt Partnership meeting at Malaga Fire Hall on April 27.

The Mathison family, doing business as Wheeler Ridge LLC, wants to build a reservoir for 100 acre-feet of water, plant a 10- to 20-acre test block of cherry trees and, if it tests well, plant 175 to 250 acres of new orchard on Section 17.

To do that, it needs to install an irrigation pipeline and improve a Chelan County road right-of-way through the northern part of Section 16 that is being sold by the state Department of Natural Resources to the state Department of Fish and Wildlife. The Mathisons have been unsuccessful in trying to buy or lease Section 16 for orchard development.

Late season, high elevation cherries bring good money, but Mathison said a test block is needed to determine if cherry trees can survive the harsh spring frosts in the terrain that averages about 4,200 feet elevation.

Opponents, including residents and the Wenatchee Sportsmen's Association, say the Mathisons' plans along with Mission Ridge Ski Area plans to develop Section 19 and possible state plans to allow business development at nearby Squilchuck State Park all threaten the migratory path



Dan Wheat/Capital Press

From left, Kyle Mathison, Norm Gutzwiller, Bob Parlette, Gordon Goodwin and Bud Riker talk about cherry plans on Section 10 high in the Stemilt Basin south of Wenatchee, Wash., in 2015. The plans remain contentious.

of a herd of 6,000 elk.

The Stemilt Partnership was formed in 2007, prevented development at that time and stated its goals of protecting water, wildlife and enhancing recreational access. Agriculture was not a goal.

The county bought sections from Longview Fibre and WDFW bought two sections from DNR to prevent development.

At the meeting, James Brown, WDFW North Central Region director, reported the department is offering DNR a yellow book appraised value of \$1.8 million for two more sections, Sections 16 and 22, but that DNR is holding out for \$1.9 million.

Sportsmen's Association members heatedly accused the Mathisons of going behind their backs to get a county permit to install the irrigation pipeline. County commissioners suspended the permit.

"We asked you to wait on any development until the transfer (of Sections 16 and 22) from DNR to WDFW. You've gone against everything we asked for and went behind our backs to screw up the goals of the partnership. You haven't acted in good faith and now you ask us to go along with another proposal," Dan Dickerson, WSA secre-

tary, said, his voice rising in anger.

"That's your opinion and I didn't try to go behind anyone's back. I said we would develop 17 when we bought it," Mathison replied.

WSA members Keith Boyd and Jerry Gutzwiller said the Mathisons were trying to avoid environmental reviews by approaching the project piecemeal, first applying for just a permit to install a pipeline and later permission to improve the road.

State Sen. Linda Evans Parlette, R-Wenatchee and a Stemilt Basin orchardist, said she can favor a pipeline but not a road. Her husband, Bob, said any water reservoir should trigger an environmental review, noting not too far away at Whispering Ridge residents have been warned about a potential massive landslide.

Mike Kaputa, Chelan County natural resources director, said he's afraid the Stemilt Partnership "may start to fracture" and that he sees pathways to litigation. He asked Mathison to address the larger picture of the basin's future.

"We've tried to start that process (working collaboratively), but it hasn't gotten a lot of traction," Mathison

said. It's been too argumentative among competing interests, he said.

"It's not that people don't like orchards. It's just that you are going right into the heart of this (protected area) and putting in orchards. There will be helicopters blowing off fruit, spraying and vehicles," Gutzwiller said.

Noting the Mathisons bought Section 17 for \$794,900 in 2014, Gutzwiller asked Mathison to sell it to the county or WDFW to prevent bad feelings.

Mathison said he may consider options if the situation becomes too adversarial.

"I sense your frustration in not getting any traction, maybe a facilitator would help," Bob Parlette said.

Mathison replied that a facilitator could be used for the whole basin, not just Section 17.

The Parlettes, County Commissioner Ron Walter and Kaputa endorsed that idea and Kaputa said he will have the Stemilt Partnership steering committee look into it.

Dave Gimlin, WSA president, said a facilitator and holistic review of basin plans will only work if the Mathisons, Mission Ridge and state parks all hold off on development plans.

Egg prices plunge as supplies rebound

By TIM HEARDEN
Capital Press

FRESNO, Calif. — Commercial egg prices in California are plummeting, and a slow global economy combined with a rebounding chicken flock after last year's devastating avian flu outbreak are among the contributing factors.

As of April 29, retailers in the Golden State were paying an average of \$1.42 to \$1.49 per carton for jumbo and extra-large Grade AA eggs, and Southern California retailers paid as little as 68 cents a carton for extra-large eggs and \$1.01 per dozen jumbo eggs, according to USDA shell-egg market reports.

It's a precipitous drop from the more than \$2.50 per carton that retailers were paying for jumbo eggs in early 2015.

Egg prices are now on a par with what they were in November 2008 when voters passed Proposition 2, which mandated minimum cage sizes for egg-laying hens.

The price slide shows the industry has withstood the requirement that each egg-laying hen have at least 116 square inches to spread its wings, said Paul Shapiro, vice president of farm animal production for the Humane Society of the United States, which sponsored the initiative.

"Last year was a bit of an

anomaly because of the catastrophic bird flu that resulted in tens of millions of laying hens being killed across the nation," Shapiro told the Capital Press in an email. "All that said, the big story is now that many California retailers are going 100 percent cage-free with their egg supply, and smart egg producers will convert sooner rather than later to capture that market."

But the drop in prices concerns Karen Ross, California's secretary of food and agriculture, who noted that prices for feed, water, land and other inputs aren't going down.

"I'm very worried," Ross told the Capital Press. "We

actually had such high prices for longer than normal, and then to see how far down it's come."

Prices may not be finished dropping, either, said Randy Pesciotta, vice president of the egg division for the Bayville, N.J.-based commodity reporting service Urner Barry. As a global economic slowdown and a strong dollar have put a damper on exports, U.S. producers are quickly replenishing their flocks after losing 35 million chickens last year to bird flu.

One industry forecast predicted that U.S. egg producers will have 320.5 million chickens by December, up from 304 million now, Pesciotta said.