

Farmers seek legal fees from GMO ban supporters

By MATEUSZ PERKOWSKI
Capital Press

GRANTS PASS, Ore. — A judge here is considering whether parties that unsuccessfully defended a legal challenge to Josephine County's GMO ban should pay the plaintiff farmers' attorney fees.

In May, farmers Robert and Shelley Ann White convinced a judge the county's GMO ban, approved by voters in 2014, was pre-empted by a state law passed the prior year.

Supporters of the ban — Oregonians for Safe Farms and Families, a nonprofit, and Siskiyou Seeds, an organic company — intervened in the lawsuit to defend the county ordinance.

Now, the plaintiff farmers

are seeking to recover \$29,205 in attorney fees from the intervenors for unnecessarily complicating the litigation.

"All we want is compensation for time that we had to waste," John DiLorenzo, attorney for the growers, said Wednesday during a hearing on the matter.

The intervenors unsuccessfully argued that Oregon's seed pre-emption law was unconstitutional because lawmakers created a "regulatory void" by not imposing rules on GMO production.

DiLorenzo said this wasn't an objectively reasonable argument because the intervenors could point to no legal precedent in Oregon, but instead relied on a ruling from Ohio.

"It had absolutely no bear-

ing on Oregon law," he said.

Legal questions over state pre-emption of local ordinances have long been settled by previous court rulings, he said.

"Ignoring them would upset years of decisions and throw state pre-emption law into complete disarray," DiLorenzo said.

OSFF and Siskiyou Seeds countered that the plaintiffs are not allowed to recover attorney fees and are simply trying to send a "chilling message" to prevent similar defenses of local ordinances elsewhere.

The intervenors' arguments were plausible even if they ultimately didn't persuade the judge, and attorney fee sanctions can only be awarded when claims are entirely without legal merit, according to

their attorneys.

The authority of local governments to set their own rules should be revisited by higher courts in Oregon, which the intervenors are pursuing through an appeal, said Stephanie Dolan, their attorney.

"There are instances where the law is shaken up and changed," Dolan said.

Because Josephine County's GMO ban presented a novel legal question, the intervenors were allowed to cite case law from Ohio to argue Oregon's pre-emption statute was unconstitutional, the intervenors claim.

Sanctions of attorney fees can only be awarded when a party acts in bad faith, but that wasn't the case here, said Melissa Wischerath, attorney for

the intervenors.

"Just losing an argument doesn't rise to that level," she said.

The plaintiffs, whose lawsuit is supported by biotech interests, should not be allowed to instill fear about making arguments that challenge the status quo, she said.

"We want to be able to ensure that safe space remains open in our court system," Wischerath said, paraphrasing a court ruling.

The fee request is also excessive because their lawyers are claiming to have worked unreasonably long hours at higher-than-normal rates, she said.

"Those rates are literally off the chart for this area," Wischerath said.

Both OSFF and Siskiyou Seeds would be financially devastated by the proposed award, which would discourage similar public policy litigation in other counties, they claim.

"This battle may be uphill but these claims are in no way frivolous and sanctions should not be applied," said Dolan.

Josephine County Circuit Court Judge Pat Wolke asked DiLorenzo, the plaintiffs' attorney, whether it would be wise to postpone the sanctions question until the lawsuit is resolved on appeal.

DiLorenzo said any ruling on attorney fees would likely be consolidated with the overall appeal.

Wolke has taken the matter under consideration and said he will issue a written ruling.

USDA projects 38,000-ton hazelnut crop

Some farmers expect production to be higher

By MATEUSZ PERKOWSKI
Capital Press

Oregon farmers are projected to reap 38,000 tons of hazelnuts this year, which would be a substantial increase over 2015 but less than some had expected.

The USDA's National Agricultural Statistics Service has forecast the crop will be 22.5 percent larger in 2016, based on statistical surveys conducted earlier this summer.

Although the average number of nuts collected per tree in the survey was 224, up from 186 last year, they weighed slightly less and a bit more of them were defective, according to the forecast.

Gene Pierce, a NASS statistician, said he noticed more space within the shells than during past surveys.

"The kernel hadn't filled to the entire capacity of the shell and it had already stopped development," Pierce said.

Garry Rodakowski, chairman of the Oregon Hazelnut Commission, said he was expecting a larger forecasted crop of roughly 42,000-43,000 tons, but that's based only on observation.

Predicting the actual harvest is tough because the



Mateusz Perkowski/Capital Press
Gene Pierce, agricultural statistician with the USDA, prepares to collect hazelnuts as part of the agency's annual crop forecast. Changes in the hazelnut industry have made such statistical analyses more challenging.

hazelnut industry isn't sure exactly how many Barcelona trees afflicted with eastern filbert blight are being removed and how many new disease-resistant Jefferson trees are reaching maturity, he said.

"We've got two curves and we don't know where they meet," said Rodakowski. "We've had a lot of plantings going in, but they haven't gotten to the production stage as quickly as we'd thought."

The trees in Rodakowski's orchard near Vida, Ore., ap-

pear to be generating healthy yields, but he owns smaller acreage than some hazelnut growers and has been able to "stay on top of pruning" to keep EFB at bay, he said.

The fungal pathogen also infected orchards in the area later than other portions of the Willamette Valley farther to the north, Rodakowski said.

Rodakowski agrees with USDA that some nuts haven't fully filled shells this year.

"I have seen what they're talking about, and my speculation would be a lack of moisture," he said, adding that newer, irrigated orchards wouldn't have the problem.

The drier, warmer growing season is likely to result in the harvest beginning in mid-September rather than the typical early October, he said.

Crop estimates provided by farmers to the Northwest Hazelnut Co., a processor based in Hubbard, are generally higher than the 38,000 tons projected by USDA, said Jonathan Thompson, the company's CEO.

"I can tell you the growers we're talking to are much more optimistic than that," Thompson said.

While the USDA's forecast is helpful, processors ultimately wait until the crop is being harvested before making firm commitments to buyers, he said. "It's just one piece of the puzzle."

APHIS, researchers continue GE wheat probe

By MATTHEW WEAVER
Capital Press

USDA researchers continue to investigate 22 genetically engineered wheat plants found two months ago in a fallow Washington state field.

No conclusions have been reached, said Animal and Plant Health Inspection Service spokesman Richard A. Bell.

Laboratories at two USDA agencies continue to analyze the test results of samples taken from the incident, Bell said. Researchers are also examining wheat production in the area to look for the presence of glyphosate-resistant wheat.

Wheat breeders and geneticists continue to look for similar patterns between the two previous discoveries of glyphosate-resistant wheat and the most recent occurrence.

"We continue to examine APHIS records related to authorized field tests of MON 71700 looking for patterns that may provide insight into how these volunteers came to be growing in the fallow



Capital Press file
The investigation into genetically engineered wheat found in a fallow Washington field continues.

field," Bell said.

The investigations into the previous incidents, which took place in 2013 in Oregon and in 2014 in Montana, did not yield definitive determinations of how the plants got there.

"Over a decade had passed since the last authorized field trials," Bell said. "Any suggestions about how the volunteers came to be growing on that single field in Oregon are speculation."

Japan temporarily deferred all new purchases of Western white wheat, a blend of soft white wheat and subclass club wheat produced in the Pacific Northwest, until tests were

in place to check for MON 71700 and MON 71800, the types of Monsanto wheat discovered in Washington, Oregon and Montana.

Steve Mercer, vice president of communications for U.S. Wheat Associates, said Japan has not lifted the restriction.

"We assume their internal work on their test protocol continues," Mercer said.

South Korea restricted U.S. wheat for about four days as it began testing. The country recently tendered for U.S. wheat, including soft white, Mercer said.

All samples taken from the Washington farmer's crop were found to be negative for GE material and it was allowed to enter commerce. The agency has not identified the farmer.

APHIS did not conduct what it called a formal investigation into the incident.

"This is a minor incident involving only 22 volunteer plants," the agency stated. "USDA routinely handles these types of incidents without formal investigations."

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