

Raisin confiscation lawsuit to proceed

Lion Farms seeking crop compensation from USDA

By MATEUSZ PERKOWSKI
Capital Press

A major California raisin producer can proceed with a lawsuit that demands reimbursement from USDA for raisins that were confiscated under an unconstitutional marketing order program.

In 2015, the U.S. Supreme Court ruled that a marketing order requiring farmers to turn over a portion of their raisins to USDA to prevent market surpluses violated the constitutional ban against governmental takings of property without just compensation.

That ruling inspired Lion Farms, a raisin grower and processor in Selma, Calif., to seek financial compensation for raisins taken by the agency between 2006 and 2009.

The company lost 10-15 percent of its crop to the marketing order during those years, with the raisins valued at roughly \$1,200 to \$1,300 per ton, according to the firm's complaint.

The raisins collected from growers by the government were sold in overseas markets



Associated Press File

Farmworkers near Fresno, Calif., pick paper trays of dried raisins off the ground and heap them onto a trailer in the final step of raisin harvest. A California farm has won an appeal allowing it to seek remuneration from the USDA for raisins that were confiscated under the industry's marketing order.

and school lunch programs, with the funds paying for the marketing order's administration.

Any leftover cash was supposed to be returned to farm-

ers, but none was available to disburse to Lion Farms and other growers.

A six-year statute of limitations on such claims was seen as a major obstacle when the

lawsuit was filed, but Senior Judge Loren Smith of the U.S. Court of Federal Claims has now ruled that limit doesn't apply to Lion Farms' case.

The company could not

have reasonably filed a lawsuit seeking reimbursement for the raisins until the Supreme Court's decision made clear the marketing order was unconstitutional, Smith said

in a ruling denying the USDA's motion to dismiss the lawsuit.

"It would certainly raise ethical questions for an attorney to file litigation in a case where the client was sure to lose," he said. "In such a case the attorney would be wasting the client, the government, and the court's time and resources."

The ruling may inspire other raisin farmers to seek reimbursement for raisins turned over before the six-year statute of limitations, said Jim Burling, an attorney with the Pacific Legal Foundation property rights group that has followed the case.

The judge seems to imply the statute of limitations begins accruing from the time of the Supreme Court's decision last year, he said.

"It does strike me as creating a significant potential liability across the board for the agency," Burling said.

A major caveat is USDA will almost certainly challenge the decision before the U.S. Court of Appeals for the Federal Circuit, he said.

That appellate court is often where rulings favorable to property owners on unconstitutional takings "go to die," since they're often overturned, Burling said.

Lawsuit seeks reconsideration of BLM sage grouse rules

Harney Soil and Water Conservation District calls regulation burdensome

By MATEUSZ PERKOWSKI
Capital Press

The Harney Soil and Water Conservation District in Eastern Oregon hopes that new sage grouse regulations will be revised under the upcoming Trump administration.

To that end, the district has filed a lawsuit that seeks a court order requiring the U.S. Bureau of Land Management to reconsider the rules, which ranchers see as overly burdensome.

The BLM amended Oregon's "resource management plan" for federal lands last year as part of a broader push to protect greater sage grouse habitat and prevent further declines in the bird's population.

The agency unlawfully ignored a "rural community alternative" focused on preventing wildfire and invasive species — the greatest threat to sage grouse — developed by local BLM officials, scientists and ranchers, according to Harney SWCD's complaint.

Instead, BLM adopted a plan that will likely cause grazing curtailments, the complaint said.

The rural community alternative was disregarded not for scientific reasons, but for expediency, which isn't a valid reason to ignore the law, said Karen Budd-Falen, the district's attorney.

"The BLM ignored it because they said they were under court deadlines (from a previ-



A lawsuit seeks to force the Bureau of Land Management to review a management plan that BLM has unilaterally revised. The plan is aimed at protecting the greater sage grouse.

Associated Press File

ous legal settlement) and didn't have time," she said.

The U.S. Interior Department, which oversees BLM, doesn't comment on pending litigation but believes the plan amendment was based on the best available science and was developed collaboratively with state and local partners, an agency spokeswoman said in an email.

"We continue to believe the plans are both balanced and effective — protecting key sage-grouse habitat and providing for sustainable development," the email said. "The plans are critical to the (U.S. Fish and Wildlife Service's) determination that the greater sage-grouse does not need the protection of the Endangered Species Act, and we look forward to implementing them in collaboration with states and stakeholders."

The amended regulations contain unrealistic grass height requirements for cattle to be allowed to graze, Budd-Falen said. "In a lot of areas, the grass doesn't grow that high no matter what."

BLM is also adopting a new method of monitoring rangeland health that will require

re-training of agency employees, she said.

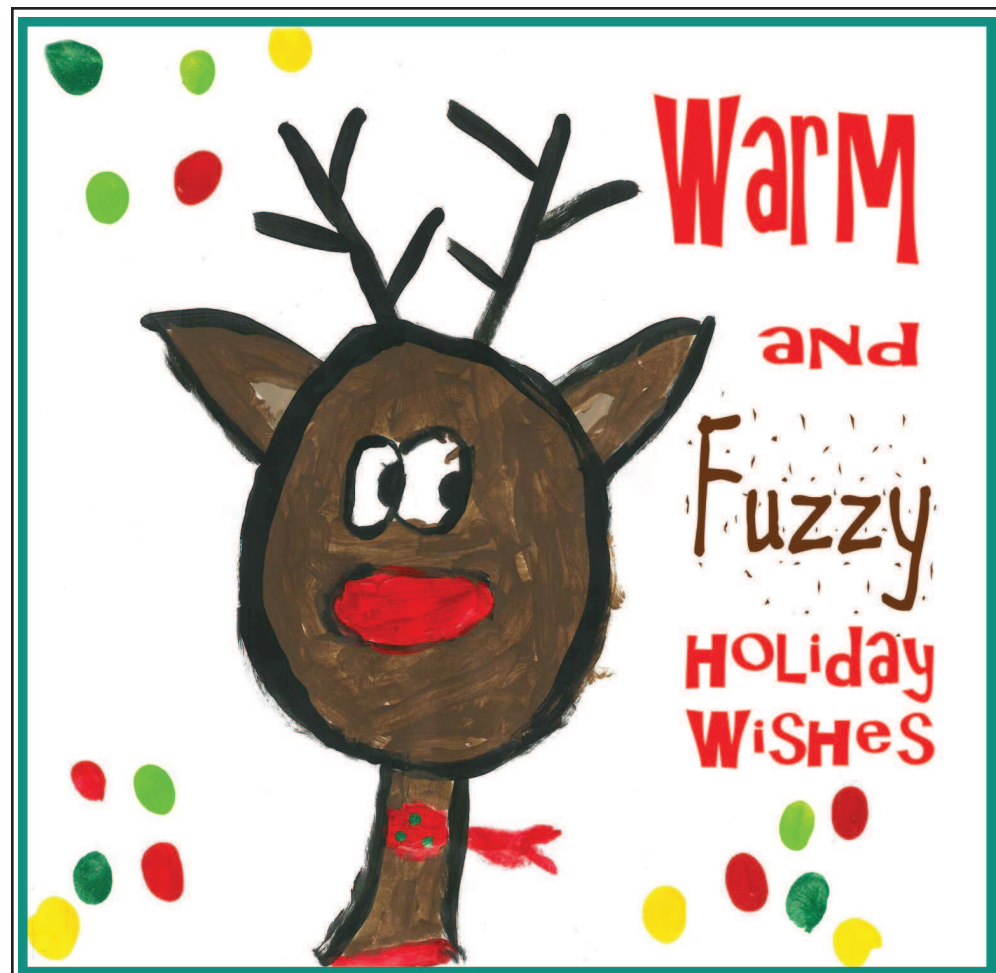
If resources aren't sufficient to monitor certain regions with the new method, that will provide environmental groups with fodder for lawsuits to block grazing, Budd-Falen said.

Ranchers depend on grazing allotments on federal land, since they don't have any ready alternatives for forage while the BLM calibrates its new monitoring strategy, she said. "These grazing allotments are part of these guys' ranches."

It would be more difficult for ranchers to build rangeland improvements due to restrictions on possible perches for predators that would hunt the sage grouse, she said.

In the best case scenario for the lawsuit, a judge would remand the amended plan to BLM, which would then incorporate recommendations in the rural community alternative that are less onerous to ranchers, Budd-Falen said.

"The Trump administration can't predetermine a decision," but it can re-start the process, she said.



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