

Supreme Court refuses to hear wetland case

By **MATEUSZ PERKOWSKI**
Capital Press

The U.S. Supreme Court will not review a farmer's lawsuit challenging the USDA's designation of a wetland on his property in South Dakota.

Farmer Arlen Foster had asked the nation's highest court to reconsider a ruling by the 8th U.S. Circuit Court of Appeals, which found that USDA was allowed to declare a wetland on the property based on plants growing 33 miles away.

The Supreme Court's refusal to hear the case is a disappointment for the Pacific Legal Foundation, a nonprofit law firm that represented Foster and believes USDA has too much leeway in declaring wetlands.

Though the Foster lawsuit has ended, the Pacific Legal Foundation is optimistic

that "nonsensical" wetland rules will soon pose less of a burden for landowners, said James Burling, the group's director of litigation.

"I'm hoping the Trump administration will be taking a bottom-to-top look at wetland regulation," he said.

Properties can be disqualified from federal crop insurance and other agency programs if they are farmed despite being designated by USDA as wetlands, meaning they have wetland soils, hydrology and plants.

In the Foster case, a one-acre parcel was determined to have wetland hydrology and soils, but it lacked wetland plants due to conversion from its natural state.

The USDA compared the property to a similar site 33 miles away to determine that it contained wetland plants and thus qualified as a wetland.

The Fosters argued that this method unfairly denied them due process because USDA decided on the site without public input roughly a decade earlier, but a federal judge and the 8th Circuit held that the agency reasonably interpreted its regulations.

Pacific Legal Foundation wanted the Supreme Court to limit the deference with which federal courts treat agency interpretations of their own rules, said Burling.

When federal agencies interpret laws to create their regulations, the process is at least subject to notice-and-comment procedures that provide feedback, he said.

If those regulations can be freely interpreted without any checks, though, it creates the risk that agencies will write regulations ambiguously to maximize their flexibility, Burling said.

Cold nips at Washington cherry buds

By **DAN WHEAT**
Capital Press

Growers used heaters and wind machines in early morning hours in some Central Washington orchards the first week of January to ward off potential bud damage from freezing temperatures.

Concern appeared limited to Rainier and Rainier-type cherry varieties and soft fruits including apricots and peaches. Winter coldness developed gradually enough over the past couple of months to give most fruit trees and wine grapes good hardiness, growers said.

Single-digit lows were recorded throughout the region several mornings accompanied by daytime highs in the teens and 20s.

It was minus 12 in Toppenish the morning of Jan. 5, minus 10 in Wapato, minus 11 in Tonasket, minus 6 at Brewster Flats, minus 2 in Wenatchee, minus 3 in Ephrata, minus 4 in Ellensburg and minus 5 in Pasco, according to the National Weather Service and Washington State University AgWeatherNet. Most readings were above zero that morning with 2 in Yakima and 5 in Chelan being typical.

Carlos Soto, supervisor at CRO Orchard south of Wenatchee, owned by Zirkle Fruit in Selah, said heaters and wind machines were used to try to protect cherry buds some of which were damaged in a mid-December freeze.

B.J. Thurlby, president of Northwest Cherry Growers in Yakima, said no growers have told him that any significant portion of their crops are in danger. A lot of fieldmen say trees have lots of buds so they may not be so worried about freezes, he said. Most varieties are safe to minus 8 to minus 12, he said.

Harold Schell, director of field services at Chelan Fruit Cooperative in Chelan, said bud samples tested in freeze chambers have shown buds of all types of tree fruit from Wenatchee north, generally in good shape.

Pears are most hardy with apples a close second and cherries and soft fruit most susceptible, Schell said. Young trees are



Dan Wheat/Capital Press

Young apple trees near Pangborn Memorial Airport in East Wenatchee, Wash., Jan. 4, where the temperature was zero the next morning. Wind machines like this one were used elsewhere to try to warm cherry buds. Horse Lake Mountain, aka Twin Peaks, in background.

also more vulnerable, he said.

Mike Omeg, a cherry grower in The Dalles, Ore., said his coldest temperature was 1 degree which is manageable because of good hardiness. He said he's not aware of any growers there using heaters or wind machines. He said he's

holding off pruning until it's above 20 degrees for worker comfort and efficiency.

Tim Smith, WSU tree fruit specialist emeritus in Wenatchee, said trees had a good, gradual acclimation to cold this season and should be OK.

Frigid weather may help farmers battle destructive bugs

By **ERIC MORTENSON**
Capital Press

Your frozen fingertips may not appreciate it, but the extended cold snap gripping the Pacific Northwest through the first week of January may actually do some good.

Oregon pest specialists say it could reduce the population or at least delay the onslaught of spotted wing drosophila, or SWD, the fruit fly that can cause devastating damage to raspberries, blackberries, blueberries and other small fruit crops.

"We're very optimistic that it will definitely impact SWD and kill off a fair amount," said Tom Peerbolt, founder and senior consultant with Peerbolt Crop Management. "From that viewpoint it's a very good event. We're killing a bunch of them off and that's good."

Peerbolt said SWD almost exclusively over-winter as adult flies, making them susceptible to cold. While they can take refuge, an extended run of cold temperatures can knock down their numbers, he said. The flies can go through a dozen breeding cycles per year, and the cold may stall the population buildups that lead to heavy damage, Peerbolt said. Even gaining a week or 10 days would help mid-season harvests, he said.

Peerbolt said SWD love caneberries, and growers are planting fewer late-season varieties in an attempt to avoid some damage. SWD populations build over the summer, so the earlier farmers can harvest, the better.

Jim Labonte, an entomologist with the Oregon Department of Agriculture, said planting earlier berry varieties is a "really good strategy" in the fight against spotted wing drosophila. "I'm glad to hear that," he said. "Toward the end of the year, the population gets to be tremendous. I think that would help."

Otherwise, Labonte said he's not sure the recent cold Oregon weather will have much effect on SWD or another major pest, the brown marmorated stink bug, which damage hazelnuts and feed on a wide variety of other crops.

Both of them live in regions of the U.S. that are far colder than the Willamette Valley, he said. "I'm uncertain of the threshold of severe cold that's sufficient to really knock them down," he said.

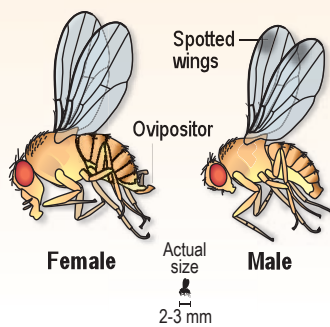
"Even if it does, both of these things can reproduce very efficiently," he said. "They may have a slow start in spring, but by mid-season there will be plenty of them around."

He said stink bugs produce far fewer generations of offspring per season than SWD, but are "remarkably tough creatures" and very good at sheltering themselves from the cold.

Spotted wing drosophila are native to Asia but arrived on the West Coast about 2008. They are unusual fruit flies in that they attack ripe

Spotted wing drosophila

- A type of "vinegar fly", its ability to feed and lay eggs on ripening fruit makes it a significant threat to Pacific Northwest growers.
- Adult spotted wing drosophilas are small with red eyes and pale yellowish-brown bodies.
- Males have a dark spot on the tips of their wings. They also have two dark bands on their front legs.
- Females lack the distinctive dark spot on their wings. Look for a large, serrated ovipositor protruding from the abdomen.
- For more information on monitoring, preventative, cultural and chemical controls, go to: spottedwing.org



Sources: Oregon State University Extension Service Alan Kenaga/Capital Press

or ripening berries and fruit; most flies are attracted to over-ripe or rotting produce. The female SWD has a serrated-edged ovipositor that it uses to cut through the berry surface and lay eggs inside. The developing larvae feed on the fruit from the inside, turning it into a gooey mess

that cannot be used commercially.

Common pesticides work against them, but require additional sprays and cost to growers. In addition, prolonged pesticide use may lead to the flies developing resistance to it, Peerbolt said.



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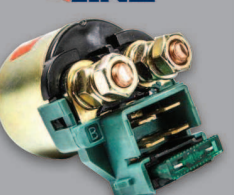
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