

Potato cooperative sues attorneys after antitrust settlements

By JOHN O'CONNELL
Capital Press

TWIN FALLS, Idaho — A cooperative that sought to influence U.S. potato acreage and some of its member companies are suing their former attorneys, alleging that bad legal advice exposed them to costly antitrust lawsuits.

Salt Lake City-based United Potato Growers of America, established in 2004, once promoted caps on spud acreage to restore market stability following years of overproduction.

The strategy was suggested by attorneys specializing in antitrust law with Utah-based Jones, Waldo, Holbrook & McDonough, according to separate complaints filed during January in Twin Falls County court on behalf of potato companies and UPGA. The

lawyer-defendants allegedly assured the potato officials supply-management strategies were protected under the federal Capper-Volstead Act.

But in 2010, the cooperative and several members were targeted by a class-action lawsuit alleging they illegally acted as a cartel to constrain production and artificially raise prices.

The following year, Chief U.S. District Judge Lynn Winmill issued an opinion in response to a motion in the case that “acreage reductions, production restrictions or colubive crop planning” weren’t shielded under Capper-Volstead.

In June 2015, UPGA and the potato companies agreed to a \$25 million settlement. However, one of the major plaintiffs, Associated Whole-

sale Grocers Inc. of Kansas City, Kan., opted out of the settlement to pursue its own case. The potato companies and cooperative settled with Associated last November. Terms were not disclosed.

“If you have a greater supply than demand, people go out of business, or they find ways to get prices up,” said Steve Six, an attorney with Associated. “That’s a basic principle, and people don’t want to go out of business.”

UPGA and the members are now seeking more than \$30 million in damages from their former law firm, according to attorneys involved in the case.

U.S. District Judge Richard Bevan is expected to rule soon on motions in the recent suit, including a motion for dismissal by UPGA’s former law firm.

According to one of the complaints, filed by two growers involved in the settlement, before the class-action suit was filed, the Department of Justice notified former UPGA attorney Jones Waldo that the cooperative’s tactics were legally questionable. Waldo allegedly failed to notify his clients about the risks. Waldo declined to comment.

Peter Carstensen, an emeritus law professor specializing in agricultural antitrust law at the University of Wisconsin, said Winmill’s opinion in the potato case has driven settlements in similar cases involving other commodities, including dairy and eggs. Carstensen said there was no case law suggesting supply management is covered by Capper-Volstead when UPGA formed, but there were some

“yellow flags” regarding the risk. Carstensen suspects cooperatives that have tried the strategy reasoned that “if we all say this is the interpretation, maybe the courts will agree with us.”

“The statutory language is quite clear there is no expressed authorization to do supply management,” Carstensen said.

Before forming UPGA, the potato companies could have asked the Department of Justice for a legal opinion on their proposed structure, noting the opinion would have provided strong protection in court, Carstensen said. They could have also filed for a formal order placing restrictions on the volume of potatoes growers could bring to market, he said. Such an order would

require approval by the Secretary of Agriculture and be subject to public oversight.

Jed Ellithorpe, a Center, Colo., grower and current UPGA chairman, said the organization continues to provide valuable data to the industry — including a variety trends assessment and an annual estimate of planted potato acres based on physical inspections of farm fields. He said UPGA is also working closely with Potatoes USA to help growers become more sustainable in their operations. UPGA also has a new president and CEO, Mark Klompfen.

“I am excited to begin to work on some strategic planning without these legal distractions,” Ellithorpe said. “It’s going to allow us to go forward.”



Lee Wicker



Dan Fazio

Pessimism on immigration reform

By DAN WHEAT
Capital Press

YAKIMA, Wash. — Chances of immigration reform passing Congress are not good, two farm labor leaders say.

Majority Republicans are divided in the House and Senate Democrats, while in the minority, can prevent nearly any bill from coming to a vote under Senate rules, said Lee Wicker, deputy director of the North Carolina Growers Association, and Dan Fazio, director of WAFLA, formerly the Washington Farm Labor Association.

They spoke at WAFLA’s annual labor conference at the Yakima Convention Center on Feb. 23.

Fazio and Wicker said they were recently in Washington, D.C., talking with Trump administration officials. Fifty-eight immigration bills were introduced in the first two weeks and none are going anywhere, Wicker said.

“Democrats will run the same game on Trump that Republicans ran on Obama. Slow everything down. Gum everything up. You have to have 60 votes to bring anything to a vote in the Senate and I don’t think it will happen,” Wicker said.

“I would predict that if Republicans dusted off the 2013 Senate bill and passed it now that Democrats (who supported it then) would vote against it because they wouldn’t want Republicans and Trump to get credit for passing something that would be helpful,” he said.

Fazio said House Republicans are divided between moderate conservatives and Tea Party conservatives and that the only way to bring them together is to pass

House Judiciary Chairman Bob Goodlatte’s bills of the last Congress. HR 1772 for E-verify (electronic verification of employment eligibility) is supported by Tea Party Republicans, and moderate conservatives liked HR 1773, an agricultural guestworker bill that WAFLA supported.

“You need both bills to bring Republicans together,” Fazio said.

Chances of getting a bill out of the House are “very small” and it’s harder to get a bill through the Senate, he said.

“There is no one out here to help you out of this tremendous labor shortage but yourselves. The closer you get to D.C., the more they drink the Kool-Aid and think something will get done,” Fazio said.

But while Fazio believes nothing will happen legislatively to grant illegal immigrants worker status or improve the H-2A-visa guestworker program, he said E-verify will happen and will “devastate many people (growers) in this room.”

The best hope for anything helping growers is Trump administration reform of H-2A, he said. The Bush administration improved H-2A right before President George W. Bush left office and the Obama administration quickly reversed the reforms, he said. The Bush reforms, among other things, allowed small farms to get certification for H-2A workers, Fazio has said.

Trump could improve the program by lessening regulations, allowing it to work more smoothly, lowering the wage threshold and allowing growers to charge a reasonable rate for housing they have to provide, he said.

Bull trout lawsuit dismissed as moot

Complaint pertained to 26 Northwest dams

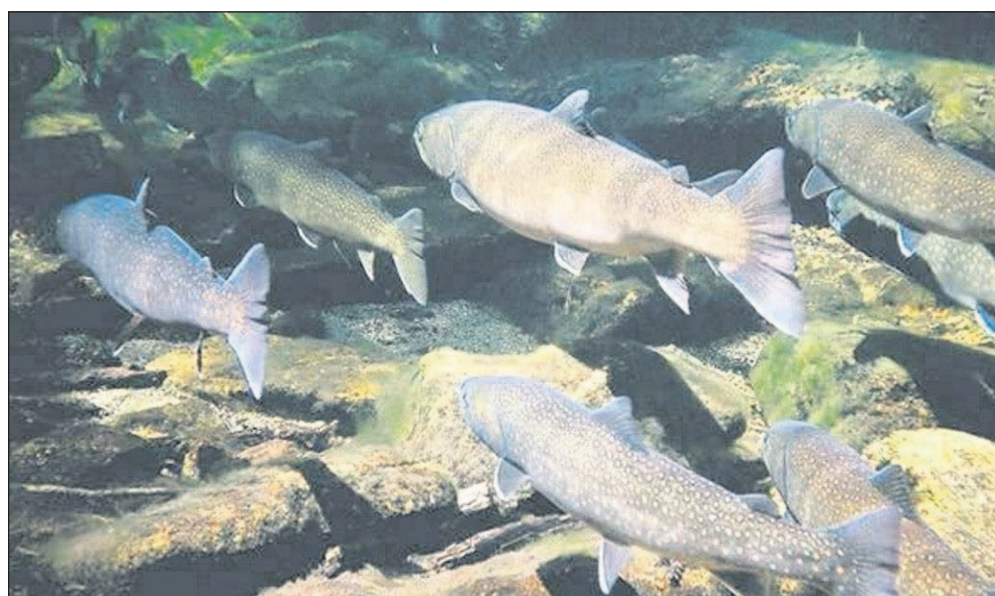
By MATEUSZ PERKOWSKI
Capital Press

A federal judge has dismissed as moot an Endangered Species Act lawsuit over 26 Northwest dams and their potential impacts on the threatened bull trout.

The Alliance for the Wild Rockies nonprofit filed a complaint against three federal agencies — the U.S. Army Corps of Engineers, Bureau of Reclamation and Bonneville Power Administration — that operate the dams in Oregon, Washington, Idaho and Montana.

The lawsuit alleged the federal agencies unlawfully failed to “consult” with the U.S. Fish and Wildlife Service about whether the dams adversely affect the bull trout’s habitat.

The environmental plaintiff claimed the federal government was required to re-initiate this consultation after more than 488,000 acres



USFWS File

A federal judge has dismissed a lawsuit filed against the three federal dam operators on the Columbia and Snake rivers. He ruled the agencies were already consulting with the U.S. Fish and Wildlife Service on bull trout, as is required by law.

were designated as “critical habitat” for the species in 2010.

The Roza and Kennewick irrigation districts in Washington voluntarily intervened as defendants in the lawsuit, fearing the federal government would be forced to stop operating dams they rely on for water until the consultation was complete.

U.S. District Judge Marco Hernandez has dismissed the case because the federal defendants have re-initiated consultation over the dams’ impacts and “provided plaintiff with the precise relief that it has sought.”

The Alliance for the Wild Rockies argued the case should be kept alive until the consultation was finished or

the federal government was ordered to issue a “biological opinion” about the potential jeopardy posed by the dams.

However, Hernandez rejected the argument because the environmental group had accused the government of improperly following procedure but not of committing a “substantive violation” of the Endangered Species Act.

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