

Judge nixes Farm Bureau suit against pay initiative

Plaintiffs weigh next step

By DON JENKINS
Capital Press

A judge has rejected a lawsuit by the Washington Farm Bureau and other business groups against a voter-approved measure that raised the minimum wage and mandated employers provide paid sick leave.

In a written ruling released Monday, Kittitas County Superior Court Judge Scott Sparks said the challenge to Initiative 1433 fell short of proving beyond a reasonable doubt the measure was unconstitutional.

Judges, Sparks wrote, “should not interfere with the democratic process of determining which laws to enact unless there is a clear legal



Don Jenkins/Capital Press

A worker picks corn in a field in Washington. A Kittitas County judge rejected on May 1 a challenge to a voter-approved measure that raised the state's minimum wage and mandated paid sick leave. The Washington Farm Bureau participated in the lawsuit.

requirement establishing the necessity of doing so.”

The decision was a setback for the Farm Bureau, which had hoped for a favorable initial ruling against an initiative that Washington

Attorney General Bob Ferguson has promised to defend all the way to the state Supreme Court if necessary.

The Farm Bureau said Tuesday that it and the other groups that filed the lawsuit

have not decided their next step. The National Federation of Independent Businesses, Washington Retail Association, Northwest Food Processors Association and Washington Food Industry Association also joined in the suit. The lead plaintiffs are Farm Bureau members Brad Haberman and Mark Charlton of Kittitas County, and William Wirth of Chelan County.

The attorney general's office did not have an immediate comment on the ruling.

The suit alleged I-1433 violated the state Constitution's single-subject requirement for laws and ballot measures. The suit claimed the measure had two distinct subjects — the minimum wage and paid sick leave — and cited other initiatives that the state high court has overturned for that reason.

Sparks, however, agreed

with the Attorney General's Office that I-1433 had one subject — labor standards.

Sparks cited a 2015 state Supreme Court ruling in *Filo Foods v. the City of SeaTac*, a case that he called “very similar.”

The high court in that case upheld a city ballot measure that raised SeaTac's minimum wage to \$15 an hour for transportation and hospitality workers and mandated paid sick leave. The measure also required businesses to offer part-time workers more hours before hiring new employees and for workers to be retained for 90 days after businesses were sold or merged.

The justices ruled that the measure had one topic, labor standards, and there was “rational unity” before the different policies.

In challenging I-1433, the plaintiffs' lawyer, ex-state

Supreme Court Justice Phil Talmadge, argued the SeaTac case should not guide Sparks. That case was more about whether the city measure preempted state and federal laws, Talmadge stated in a court filing.

Dissenting judges in the 5-4 SeaTac decision said the measure infringed on the Port of Seattle's authority to manage the Seattle-Tacoma International Airport, but did not challenge the majority's judgment on whether the measure had more than one subject.

I-1433 won 57 percent of the vote in November. The minimum wage rose to \$11 on Jan. 1, tying Washington with New York and Massachusetts for the state with the highest pay floor. The wage is scheduled to gradually rise to \$13.50 by 2020. Paid sick leave becomes mandatory next year.

EPA approves limited use of herbicide to control GE bentgrass

By SEAN ELLIS
Capital Press

ONTARIO, Ore. — The Environmental Protection Agency has approved a special local need label for an herbicide that controls a genetically engineered creeping bentgrass that has taken root in Malheur and Jefferson counties in Oregon.

The grass escaped field trials in 2003.

The label is approved for only those counties.

The bentgrass was genetically engineered by Scotts Miracle-Gro Co. and Monsanto Co. to resist applications of glyphosate, the active ingredient in Monsanto's Roundup weed killer, which makes it hard to kill.

The special label will allow growers, irrigation districts and others to spot spray glufosinate over water during the growing season.

Glufosinate has proven the most effective herbicide for controlling the bentgrass but it previously could only be used over waterways such as canals during a short period at the beginning and end of the growing season.

“This is a huge tool in our tool box,” said Dan Andersen, co-chairman of a working group of farmers, irrigation district representatives and others that was developed in Malheur County to coordinate with Scotts in its continuing efforts to control or eradicate the grass.

Some farmers worry the bentgrass could clog irrigation ditches and affect shipments of crops to nations that don't accept traces of genetically modified organisms.

The bentgrass has proven difficult to control near canals and irrigation ditches because of the previous lack of an herbicide approved for use over water.

Malheur County farmer Bruce Corn, a member of the Owyhee Irrigation District board of directors, said having the ability to use glufosinate over waterways for the entire growing season will be a big benefit. “It should really help efforts to eradicate it,” he said. “It's a big deal.”

USDA in January deregulated the bentgrass and some growers have questioned Scotts' commitment to continue controlling it.

But Andersen and other members of the Malheur County working group told Capital Press the company is living up



Sean Ellis/Capital Press File

A genetically engineered creeping bentgrass plant grows in an onion field south of Ontario, Ore., on June 14, 2016. EPA has approved a special local need label for an herbicide that is effective in controlling the genetically engineered creeping bentgrass that has taken root in Malheur and Jefferson counties in Oregon after escaping field trials in 2003.

to its promise to continue helping growers and irrigation districts control it.

Les Ito, a farmer and working group member, said his biggest fear when USDA deregulated the bentgrass was that Scotts would walk away from the issue.

“I'm much more comfortable with them now than I was prior,” he said. “They're showing that they are putting out a great deal of effort to work with us.”

Andersen said Scotts led the effort to get the special need label, which is valid through 2022, and the company has

designated an employee to coordinate with the working group and address concerns as they arise.

Andersen said no crops have been contaminated by the grass to date and he feels good about Scotts' commitment to controlling the bentgrass.

“The relationships we have built up with Scotts are sound. I'm going to trust them to do what they say they are going to do,” he said. “And yet we are also going to keep their feet to the fire and we're going to keep asking questions and we're going to keep on them.”

USDA's agreement to kill Oregon wolves ruled lawful

Judge rules that USDA's involvement not a 'major federal action'

By MATEUSZ PERKOWSKI
Capital Press

The USDA's agreement to kill wolves on behalf of Oregon wildlife regulators isn't a “major federal action” warranting environmental review, according to a federal judge.

Even if USDA's Wildlife Services was required to study the impact of killing wolves in Oregon, the agency properly concluded it would have no significant environmental impact, U.S. District Judge Michael McShane ruled.

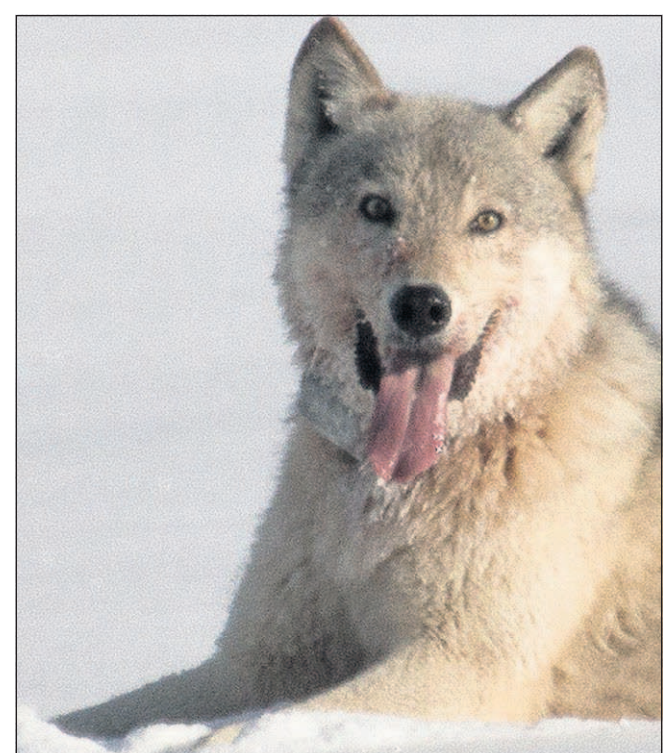
Several environmental groups filed a lawsuit last year arguing that USDA's Wildlife Services insufficiently studied the effects of its contract with the Oregon Department of Fish and Wildlife to kill wolves.

The plaintiffs — Cascadia Wildlands, Center for Biological Diversity, Wildearth Guardians, Predator Defense and Project Coyote — claimed the agency's decision violated the National Environmental Policy Act, or NEPA.

Wolf management is governed by state wildlife officials in Eastern Oregon, where the predators aren't protected under the federal Endangered Species Act.

In 2009, ODFW directed USDA Wildlife Services to kill two wolves, bringing about a lawsuit from environmental groups.

The resulting settlement obligated USDA to conduct an environmental assessment of the agreement, but



Courtesy of Oregon Department of Fish and Wildlife

OR42, the breeding female of the Chesnimnus Pack in northern Wallowa County, is seen in February. A judge has ruled USDA's contract to kill wolves on behalf of Oregon wildlife officials was lawful.

the analysis found the federal agency's involvement didn't have significant environmental consequences.

McShane has now rejected the plaintiffs' argument that USDA should have conducted a more extensive “environmental impact statement,” or EIS, due to the controversy and unknown risks of killing wolves.

The agency took a “hard look” at the issue and allowably concluded that “due to the high reproductive rates of wolves and the ample prey and territory in Eastern Oregon, wolf populations are expected to grow despite wolf removal, regardless of the source,” the judge said.

Some of the studies submitted by the environmental plaintiffs supported the con-

cept that killing wolves eliminates “genetic or behavioral traits” linked to livestock depredation, McShane said.

However, the USDA wasn't even mandated by NEPA to perform this environmental analysis, he said.

The decision to kill wolves ultimately rested with ODFW, not USDA Wildlife Services, so the action doesn't trigger an environmental review by the federal agency, the judge ruled.

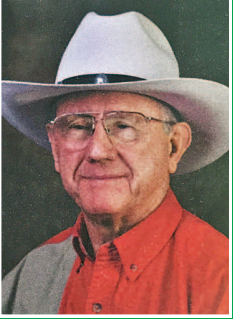
“Because Wildlife Services provided only marginal federal funding and lacks the requisite discretionary control, Wildlife Services' actions in assisting with wolf removal as part of Oregon's Wolf Plan does not constitute ‘major federal action’ and NEPA does not apply,” he said.

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