

Washington

Court to decide piece-rate pay issue

Federal suit may upend labor practices, again

By **DON JENKINS**
Capital Press

OLYMPIA — The Washington Supreme Court will decide whether piece-rate farmworkers must be paid separately for time spent on tasks such as carrying ladders, attending meetings and moving between fields, an issue the Legislature declined to settle.

The question stems from a federal class-action lawsuit similar to one that led the court in 2015 to unanimously rule that piece-rate farmworkers must be paid for 10-minute rest breaks based on how much they would have earned by continuing to pick.

The new lawsuit raises the same issue for so-called “piece-rate down time” — time spent at work but not picking.

If the court again mandates separate pay, the decision will

be another major change in farm pay practices, said Washington labor attorney Sarah Wixson, who is not directly involved in the case but represents agricultural employers that would be affected.

“No longer will you be able to pay straight piece rate and call it good,” she said.

The lawsuit was filed in the U.S. District Court for Eastern Washington against the Dovex Fruit Co. of Wenatchee by a Seattle law firm that was involved in the suit against Sakuma Brothers Farms, a berry company in Skagit County. The Sakuma case changed the farm industry’s longstanding practice of assuming piece rates compensated employees for rest breaks, as long as workers made at least minimum wage.

Federal Judge Salvador Mendoza Jr., who is presiding over the Dovex lawsuit, has asked the Supreme Court to rule whether Washington law also mandates separate pay for non-picking tasks.

The Washington Tree Fruit Association proposed legis-

lation this year to set pay for down time at 108 percent of the state minimum wage. The bill also would have settled back pay claims filed after the Sakuma decision. Farmworker advocates urged lawmakers to let the Dovex case and other lawsuits alleging pay violations to play out in court. The bill failed to pass.

The Supreme Court has not set a date for oral arguments. In an opening brief, Seattle lawyer Marc Cote argued that piece-rate pay fails to compensate employees for all work, and “perpetuates abusive employer actions that take the fruit of workers’ labor without paying for it.”

Even if the court agrees, Wixson said that she thinks some form of piece-rate pay will continue, partly because farmers will have to continue paying piece rates to attract top employees.

“The best workers are going to go to farms with piece rates,” she said. “It is the economic model to promote production and have that production awarded, and it’s ingrained in workers’ and em-

ployees’ expectations.

“It does put internal pressure on workers, but that pressure is rewarded,” Wixson said.

The state Supreme Court in recent years has consistently ruled against agricultural employers in labor cases, including in the Sakuma decision.

Nevertheless, the Dovex case presents a different question than the one more narrowly focused on rest breaks, Wixson said.

“We’ve got some additional arguments to make on the Dovex case,” she said. “I’m hopeful on Dovex.”

In a similar class-action lawsuit against a trucking company, Western Washington District Judge Robert Lasnik last year rejected a claim that drivers paid by the mile must be compensated for non-driving tasks.

The judge ruled that Washington law provides flexibility in negotiating the method of compensation as long as the employer pays at least minimum wage for each hour of work.



Submitted photo

Shari and Ron Brewer, owners of R&S Forestry and Construction in Darrington, Wash., say they are concerned about the proposed reintroduction of grizzly bears into the North Cascades.

Rural Washington group questions grizzly plan

By **DAN WHEAT**
Capital Press

DARRINGTON, Wash. — A group of backcountry enthusiasts opposes the reintroduction of grizzly bears in the North Cascades without updated studies.

Darrington Area Resource Advocates includes residents, representatives of the Sauk-Suiattle Tribe, a Hampton Lumber mill, business owners, backcountry horsemen and others whose goal is to promote sustainable use and enjoyment of the natural, recreational and historical resources in the Darrington area.

A five-year review required by the Endangered Species Act was last done in 2011. It relied on a 1993 recovery plan that was supplemented in 1996 and 1997 and needs to be updated, DARA said in 57 pages of comments it sent to the National Park Service on April 25.

NPS could make a decision early next year on restoring a reproducing population of about 200 bears by bringing them in from other areas.

Darrington is a town of 1,400 people in the remote upper Stillaguamish Valley. It is surrounded by Cascade Range peaks, some towering 6,000 feet above. The Hampton Lumber mill is the largest employer.

The nearest town of any size is Arlington, which is 27 miles to the west.

Ron and Shari Brewer own one of two logging companies left in town and are members of DARA.

“The spotted owl took its toll on logging and grizzlies will restrict it more,” said Ron Brewer, 70, who has been a logger 48 years.

While the NPS Draft Environmental Impact Statement for grizzly reintroduction says a benefit will be increased tourism, Brewer said more trails and roads will be closed and hiking and tourism will suffer.

The North Cascades National Park is the second-least visited national park in the country. Fewer than 30,000 people annually visit its backcountry, where grizzlies would be, DARA states in its written comments.

“I would say basically most people are not for it,” Brewer said. “The biggest worry is going out to your barn and having someone else in it.”

Because there has been no confirmed evidence of grizzlies in the North Cascades since



Grizzly Bear Outreach Project

The National Park Service is considering a plan to increase the population of grizzly bears in the North Cascade Range of Washington state.

1996, there is no emergency need to reintroduce them until the 1993 recovery plan is updated and the 2016 five-year summary that is now overdue is completed, DARA states.

Furthermore, the DEIS contains no compelling evidence that a substantial grizzly bear population ever existed in the North Cascades or that there’s a need for one, DARA states.

The DEIS presents no evidence that the North Cascades Ecosystem is impaired by the absence of grizzlies, nor does it address in any substantive way the bears’ impacts on salmon, the group says.

The DEIS premise that livestock losses will be compensated by the state is not reasonable, DARA says.

Shari Brewer, 66, said the Park Service is planning to bring grizzlies into Green Mountain meadows, which is the hiking access route to Glacier Peak. The meadows are east of town.

“We have lost 95 percent of our day hikes in Darrington in the last 25 years because of federal agency road closures. This will close more,” she said.

It’s only 30 miles from the Green Mountain trailhead to Lake Chelan, and grizzlies have a normal range of 60 miles.

Her biggest concern is there will be little food for the bears and they will become laden with parasites and driven to going after people.

Yellowstone National Park has large meadows of 50 square miles, hot springs, bulbs, sedges, elk, bison and moose that grizzlies like, she said.

The North Cascades ecosystem has changed since 1993 with fewer meadows and areas once logged grown back in woods also causing a decline in berries, Brewer said.

State builds new greenhouse to test mother fruit trees

By **DAN WHEAT**
Capital Press

PROSSER, Wash. — A new \$750,000 greenhouse will provide greater capacity to test registered mother trees for the tree fruit industry.

The state Department of Agriculture facility is at the Washington State University Irrigated Agriculture Research and Extension Center near Prosser.

“This larger greenhouse with its automated features, improved temperature controls and watering system will give us an increased capacity to test registered mother trees at a rate greater than we’ve been able to do in the past,” Derek Sandison, WSDA director, said in a news release.

The 4,800-square-foot greenhouse has three growing



Courtesy of WSDA

The new \$750,000 state Department of Agriculture greenhouse at the Washington State University Irrigated Agriculture Research and Extension Center in Prosser. It is used to test registered mother fruit trees for viruses.

bays with individual temperature controls that better duplicate temperature ranges where fruit tree viruses can thrive. This makes symptoms readily discernible, increasing the effectiveness of virus indexing, Sandison said.

The facility has work areas for potting, a walk-in cooler and separate equipment storage. It replaces a smaller greenhouse that had minimal temperature control. The greenhouse was funded from assessments on nurseries that

sell Washington-grown fruit trees.

The department’s Fruit Tree Planting Stock Certification Program has nearly 35,000 registered mother trees that serve as a source for the propagation of high-quality trees for the tree fruit industry. The trees are grown by department-certified nurseries that acquire stock from the Clean Plant Center Northwest, also located at the Prosser center and which is part of the National Clean Plant Network. It is one of three clean plant centers for fruit trees in the nation.

Washington fruit trees are sold worldwide. Ensuring they are virus-free is key to success of the apple, pear and cherry industries. Viruses can reduce yield, affect fruit quality and impact trade.

Washington bill seeks to head off unlicensed hemp

State and federal legal status differ

By **DON JENKINS**
Capital Press

OLYMPIA — A marijuana reform bill waiting for Gov. Jay Inslee’s signature could give the Washington State Department of Agriculture power to fine farmers who grow hemp without a license, restoring authority that was apparently stripped from the department in another bill he signed last week.

Senate Bill 5131 primarily deals with the state’s robust marijuana trade. But a section added late directs WSDA to set penalties for cultivating or processing

hemp without a license.

The section responds to legislation that removed hemp from the state’s list of controlled substances. Inslee signed the bill, though WSDA had warned lawmakers that legalizing hemp could undercut the department’s new hemp program.

WSDA set up the program to keep farmers on the right side of federal law, which still categorizes hemp plants as illegal.

“We understand the impulse to remove industrial hemp from the state’s Controlled Substances Act,” WSDA policy adviser Steve Fuller said Wednesday. “It’s just the logistical questions it raises in operating our license system that gives us pause.”

Washington, a pioneer in legalizing recreational marijuana, had until this session moved cautiously on hemp. The 2014 Farm Bill legalized hemp farming, but only under state supervision. WSDA plans to start issuing hemp licenses as early as May 15.

House Bill 2064, which removed hemp from the state’s controlled substances act, jumped ahead of federal law. Based on floor speeches and committee hearings, Washington legislators apparently thought the bill brought the state in line with federal law.

Drug Enforcement Administration spokesman Russ Baer in Washington, D.C., said that he had not heard of another state taking a similar action.

“Under federal law, industrial hemp remains a Schedule 1 substance,” he said. “The Farm Bill did not change the (federal) Controlled Substances Act.”

Baer said the DEA has higher enforcement priorities than hemp, such as heroin, methamphetamine, opioids and cocaine.

Despite HB 2064, WSDA has taken the position that hemp growers must be licensed, Fuller said. “Enforcement around that is going to be a challenge,” he said.

SB 5131 would strengthen WSDA’s hand, but the department would need time to write a rule spelling out penalties for unlicensed hemp farming. “A year is not unusual” for rule writing, Fuller said.

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