

# Campaign mounted seeking to have Trump administration intervene

DUARTE from Page 1

The trial follows years of legal maneuvering and months of pleas by Duarte, his attorneys and supporters to President Donald Trump's administration to intervene.

Duarte's lawyer, Pacific Legal Foundation senior attorney Tony Francois, has also been in settlement talks with the U.S. Justice Department, but as of press time no agreement had been reached.

"It keeps going," Duarte said one recent morning as he stood where the trouble began — in the middle of the 450-acre grass field south of Red Bluff, where he had intended to plant winter wheat.

Francois hasn't given up on the possibility of an eleventh-hour reprieve.

"We remain hopeful that the administration will reassess its view of the case," he said, "but so far nothing has come to fruition on that front."

Asked by the Capital Press if a resolution could be near, Justice Department spokesman Justin Abueg declined to comment.

## Troubles begin

Duarte, who also owns Duarte Nursery in Modesto, Calif., purchased the Tehama land in 2012 and pondered what to do with it. The field had been planted to wheat decades before but more recently was used to graze cattle, he said.

Commodity prices were high in 2012, so Duarte decided to put the land back into wheat production, Francois, his attorney, said.

Duarte said a wetland determination by a consultant had been done shortly before he bought the property.

"We knew where the wetlands were," Duarte said. "I don't think you'll ever find a grower who's done a wetland delineation to plant wheat. ... The depth of tillage on wheat isn't enough."

The Army Corps still issued a cease-and-desist order to Duarte, finding him in violation of the 1972 Clean Water Act for farming without a wetlands permit. As a result of the order to stop, Duarte lost the \$50,000 it cost to plant the wheat and the ability to grow a field crop on the property, Francois said. He would also have to pay a multi-million-dollar fine.

The field was leased out last winter as cattle pasture, Duarte said.

The PLF filed suit on Duarte's behalf in 2013, disputing the Corps' allegations and arguing the government violated his Fifth Amendment due-process right by not allowing him to answer the charge in a hearing. The Corps responded with a counterclaim alleging the Clean Water Act violation.

The Corps claims the tillage on Duarte's property "relocated earthen material into



Tim Hearden/Capital Press

John Duarte, left, talks with Pacific Legal Foundation senior attorney Tony Francois on Duarte's property south of Red Bluff, Calif. Duarte is being sued by the federal government for allegedly plowing wetlands on the property while the farmer is challenging the government's interpretation of the Clean Water Act.



Doug LaMalfa

ridges," unlawfully raising the elevation of the soil in the wetlands with "fill material." Last year, U.S. District Judge Kimberly Mueller agreed,

ruling that Duarte should have obtained a permit to run shanks through wetlands at a depth of 4 to 6 inches, creating furrows.

Duarte and Francois insist the law is on their side, noting that Congress drew clear exemptions for normal farming practices such as plowing when it passed the Clean Water Act. They plan to appeal that decision.

"This case has the law wrong," Francois said. "What Duarte ... did on this property was plowing."

The attorney's latest maneuver has been to file a motion to dismiss the case on the grounds that the Army Corps had no jurisdiction. The U.S. Environmental Protection Agency, not the Corps, has the authority to bring enforcement actions when no permit has been obtained, Francois said.

Mueller will consider the motion Aug. 15 before hearing other evidence, he said.

## Trump turnaround?

During the ordeal, Francois and Duarte have mounted a public-relations offensive, inviting reporters, members of Congress and leaders of organizations such as the American Farm Bureau Federation to the property.

As of this summer, a California Farm Bureau Federation-sponsored fund for Duarte had raised more than \$100,000, he said.

Their hopes for a political solution got a boost last November, when voters elected Trump and a Republican-led Senate and House of Representatives.

In February, the president issued an executive order directing EPA administrator Scott Pruitt to review the "Waters of the United States" rule



Col. David G. Ray

and asking Attorney General Jeff Sessions to consider the review as it pursues litigation initiated under then-President Barack Obama.

The EPA and Army Corps have since proposed scrapping the WOTUS rule, which critics say encroaches on private property rights.

At his Senate confirmation hearing, Pruitt appeared to agree with Sen. Joni Ernst, R-Iowa, who ridiculed what she saw as the Obama administration's policy that "any plowing that pushes soil into furrows is not an exempt farming activity because the tops of plowed furrows can dry out," she said.

Ernst asked Pruitt if EPA "will work with the Corps and (the Department of the Justice) to make sure that federal agencies stop trying to regulate ordinary farming practices."

"Yes, senator," Pruitt responded. In May, House Agriculture Committee Chairman Michael Conaway and House Judiciary Committee chairman Bob Goodlatte sent a letter to Sessions arguing that Duarte's field work should qualify as "normal" farming practices under the Clean Water Act exemption.

Rep. Doug LaMalfa, R-Calif., a House Agriculture Committee member whose district includes Duarte's land, said Sessions should "call the dogs off."

"The administration needs to get a handle on it," LaMalfa said. "We've talked with the attorney general's office. They need to put the brakes on that lawsuit or at least minimize it."

The political push suggests a shift in strategy for Duarte, said Richard Frank, director of the California Environmental Law and Policy Center at the University of California-Davis School of Law.

Duarte has "mounted a political campaign seeking to



Paul Wenger

have the Trump administration — which is far less interested in asserting broad federal authority to regulate wetlands than was the Obama administration — intervene and withdraw the enforcement action altogether," Frank, a professor of environmental practice, said in an email.

However, "he and PLF have been unsuccessful in their political lobbying efforts," Frank said.

## A key ally

Duarte has an ally in U.S. Agriculture Secretary Sonny Perdue, who said Aug. 7 he planned to get the "straight scoop" about the case from Pruitt and Sessions when he returned to Washington, D.C., from a tour of Midwest farms.

Perdue said he sees the government's continued pursuit of the Duarte case as an "extension" of Obama administration policies.

"My understanding was there had been some reconciliation of the case, but it appears to be going forward," Perdue told the Capital Press. "I'm hoping that the U.S. Justice Department will see fit to hold off on that until a better definition of Waters of the U.S. appears."

But in a July 10 letter to committee chairmen Conaway and Goodlatte, acting Assistant Attorney General Samuel Ramer said he's unaware of instances when the government settled a Clean Water Act case that was pending an appeal.

"To enter such a 'contingent' settlement would be, as a general matter, contrary to the United States' interest in obtaining final resolution of an enforcement matter," Ramer wrote. "Nonetheless, please rest assured that we are often able to achieve appropriate settlements in our Clean Water Act enforcement cases, and ... we actively pursue the settlement of our enforcement cases wherever feasible."

While leaders in Washington discuss scrapping the WOTUS rule, there's been no change in how officials at the local level enforce the Clean Water Act, said Col. David G. Ray, commander of the Army Corps' Sacramento district.

"If and when there are changes, we will alter our procedures," Ray told the Capital Press. "There's been no communication down to the district level."

Paul Wenger, president of the California Farm Bureau Federation, said he wondered whether the Trump administration would drop its pursuit of the case. But he's not surprised that it's moving forward.

"Once it's in the courts, you can't pull it back," he said. "I know there have been requests by Congressman Doug LaMalfa and others to the attorney general's office that it's not a good case and they ought to pull it back. ... But the judge ruled against Duarte, so it's kind of like it's on its own course now."

## Impact uncertain

Wenger and other farmers' advocates say if the case against Duarte is upheld by the courts, it could force growers across the country to obtain costly permits for normal activities such as plowing and planting, which was not the intent of Congress. It could also bring more lawsuits from environmental groups, Francois said.

"No farm in America is safe from this kind of prosecution," Duarte said.

But Kieran Suckling, executive director of the Center for Biological Diversity, said it's difficult to determine the case's ramifications because it's unknown which issues the courts will decide are the critical factors when they make rulings.

Any "grand claims" by the PLF or farm groups about winning legal precedents and scaling back the reach of the Clean Water Act are just "political huffing and puffing," Suckling said.

"The bottom line here is that no one can really predict either the outcome of the case or whether it will set interesting new legal precedents," he said in an email.

While settlements are always possible in cases such as this, Suckling said he would be more concerned if the Trump administration simply dropped the case. Such a move would signal "that the administration is going to stop enforcing the Clean Water Act," he said.

Francois acknowledges the case faces an uncertain fate on appeal, even if it reaches the U.S. Supreme Court. He believes the court could clarify the scope of the Clean Water Act as well as its farming protections. But previous cases before the high court "fell short of clarity," he said.

Frank, of the UC-Davis School of Law, doesn't think the outcome will amount to much.

"I confess that I don't really see the Duarte case as likely to have a major, future effect on the federal government's wetlands jurisdiction under Section 404 of the Clean Water Act," he said.

But the Farm Bureau's Wenger, an almond and walnut grower from Modesto, Calif., thinks the case is important.

"You always worry" about an appeal leading to an unfavorable precedent, Wenger said. "I think you just have to put up a fight."

## High stakes

Duarte said he's spent more than \$2 million putting up a fight, but the penalties demanded by the government "would wipe me out," he said.

Francois said the \$2.8 million fine "arrived from thin air," as the government's filings have never explained how officials arrived at that figure. In addition to the fine, the government wants Duarte to purchase vernal pool mitigation credits, which Francois estimates could cost between \$13 million and \$43 million.

"That's an order of magnitude (beyond) a civil penalty that's just laughable if it weren't real," Francois said. "We're prepared to show the judge that the evidence strongly favors a nominal penalty in this case as opposed to the ruinous figures that the government is demanding."

Among the factors the judge can consider is the impact of a penalty on the defendant and his nursery, he said.

"It's impossible to see how they would continue employing the 500-plus Modesto area workers that work for them," Francois said. "Basically, the government would succeed in putting several hundred good people out of good work who've had nothing to do with what happened in that field near Red Bluff."

Duarte argues there has been no long-term environmental damage to the property.

"If anything, I believe our tillage increased percolation into the ground, improved groundwater and enhanced grazing," he said.

The grower said he will continue to welcome visitors to the property.

"We would like to meet them here, but we would provide access to the property," Duarte said. "This is a very boring grass field with nothing special about it except the government prosecuting a farmer."

And he continues to lead a push for officials to put a stop to the case.

"Every farmer should be contacting their Congress person right now to get the administration's attention," he said. "This case is extremely important."

# GMO beets allow growers to use fewer herbicides

GMO from Page 1

herbicide, enjoy 100 percent adoption among Amalgamated growers and save them about \$22 million per year, he said.

Because the GMO beets allow growers to use fewer herbicides, the plants are disturbed less and they face much less competition from weed pressure, which has translated into higher yields, Grant said.

Since GMO corn was introduced in the 1990s, he said, U.S. corn acres have increased from just under 60 million to 90 million, while acres of wheat, which is not genetically modified, have dropped from about 60 million to 45 million in 2017, which is the lowest acreage since records began in 1919.

The wheat "industry is struggling because returns don't match the returns in crops grown with biotechnology," Grant said.

"The value of that technology to a farmer is intuitive," he said.

But, he added, it's not intuitive to many consumers



Sean Ellis/Capital Press File

A sugar beet field near Nampa, Idaho, is shown in this photo. Two of the nation's sugar companies will launch a \$4 million online campaign this fall aimed at educating consumers about GMO crops and changing their perceptions of the technology.

and that's the reason for the "A Fresh Look" campaign, which will target moms who are deemed to be decision makers and engage them online.

"We are going to talk to them in their language," Grant said. "All they care about is, is this good for the planet and will it be good for my kids."

The campaign will introduce those consumers to

some of the 25 environmental benefits of GMO crops that the sugar beet industry documented and submitted to the National Academy of Sciences in 2015, he said.

The use of fewer pesticides and herbicides in GMO crops will be highlighted, Grant said. "We're going to own that one."

Doug Jones, executive

director of Growers for Biotechnology, which promotes the acceptance of agricultural biotechnology, applauded the campaign.

"The public's understanding of biotechnology is very low and often misguided," he said. The campaign won't change everyone's mind, but "if they can do something to educate the public, I'm all for it."

# 'Sam Clovis is a very smart individual ... committed to the success of agriculture'

PERDUE from Page 1

Critics have taken aim at past statements by Clovis, a one-time radio talk show host and blogger who ran unsuccessfully for U.S. Senate. In 2014, he told Iowa Public Radio he was "extremely skeptical" about climate change, adding he has "enough of a science background to know when I'm being boofed."

Perdue was asked about a CNN report that Clovis, in a now-defunct blog, was highly critical of the progressive movement and former President Barack Obama, whom he called a "Maoist" with "communist" roots.

Perdue said he was unfamiliar with Clovis' alleged statements but added that Trump still has confidence in the nominee.

"I find it amazing how the media goes back years and finds every type of allegation," Perdue said. "It's what the opposition does. They did it with me. They dredge up

stories ... Sam Clovis is a very smart individual who's very committed to the success of agriculture. I fully support his nomination."

Perdue hosted the teleconference from Springfield, Ill., where he was in the middle of a tour of the Midwest to discuss the farm bill and other topics.

Among other issues, he said he plans to be "engaged" on renegotiation of the North American Free Trade Agreement. He said the trade deal's benefits to agricultural exports were a big reason Trump sought to renegotiate it rather than simply withdraw.

At the same time, American agriculture could "have a lot to gain" from the talks, including perhaps resolving issues with Canada's dairy supply management system and issues with Mexico involving pork and potatoes, Perdue said.

"But those are really minor types of issues that we can resolve," he said.