

# Critics claim ruling allows pay-offs for farm impacts

## Dispute centers on compensation requirements for landfill expansion

By **MATEUSZ PERKOWSKI**  
Capital Press

Critics claim an Oregon Court of Appeals ruling will undermine farmland protections by allowing developers to pay off farmers rather than avoid disrupting agricultural practices.

The State of Oregon is joined by the Oregon Farm Bureau and the 1,000 Friends of Oregon conservation group in asking the Oregon Supreme Court to overturn that decision.

The dispute emanates from a lawsuit over the planned expansion of the Riverbend Landfill onto farmland, which was permitted by Yamhill County over the protests of neighboring landowners.

Earlier this year, the Oregon Court of Appeals decided that Yamhill County didn't violate land use law by requiring Waste Management, the landfill's owner, to com-



Ramsey McPhillips, a farmer near McMinnville, Ore., discusses impacts from a nearby landfill on his property. A lawsuit over the landfill's expansion will be reviewed by the Oregon Supreme Court.

pensate farmers for impacts to their operations.

For example, Waste Management must either pay a farmer for cleaning up trash blown onto his property from the landfill, or hire a third party to perform the service.

The company must also pay another nearby farmer for orchard crops that are destroyed by waste from birds

that are attracted to the landfill.

Critics argue this type of compensation isn't allowed under Oregon's land use law, which aims to preserve farmland and avoid disruption to agricultural practices.

"I don't want to be paid off. I just want them not to affect my farm," said Ramsey McPhillips, the landowner

who would be compensated for trash clean-up.

Such compensation should not be a condition of county permits allowing non-farm uses, since farming operations could be rendered unfeasible even if the growers receive money, critics argue.

Such pay-offs would make it easier to site other "conditional use" developments on

farmland, such as mines, golf courses, large transmission towers and power facilities, according to critics.

"Now, all they need is to force the farmer to be paid off for the loss, and they can have their development. Where does that end?" said McPhillips.

Under Oregon law, counties can issue such "conditional use" permits for non-farm uses as long as they don't significantly change or drive up the cost of farm practices on surrounding land.

Conditions imposed on such permits should prevent such impacts, instead of allowing the disruption as long as farmers are compensated, said Tim Bernasek, attorney for the Oregon Farm Bureau, which weighed in on the case.

"That's not how it's supposed work," Bernasek said of the payment requirement.

The landfill dispute is noteworthy because it's poised to define what is a significant impact to farmland, which has been vague up until now, he said.

"This is really the first time the Supreme Court is taking a broad look at the farm impacts test," Bernasek said.

Opponents of the Oregon Court of Appeals' interpretation recently filed their opening briefs with the Oregon Supreme Court, to which Yamhill County and Waste Management must respond by the end of September. Oral arguments in the case are scheduled for mid-November.

Tim Sadlo, general counsel for Yamhill County, said the planned landfill expansion has been greatly reduced in size but other requirements were imposed on Waste Management to prevent potential adverse effects.

"I don't think we tried to buy anybody off," Sadlo said. "We can fix it with conditions, and that's what we tried to do."

The county set the compensation requirement despite there being limited evidence of birds defecating on fruit and garbage drifting onto neighboring property, he said.

Sadlo said he's surprised the Oregon Supreme Court has agreed to review the case and disappointed that Oregon's state government wants the previous ruling reversed.

"I think it's regrettable they've decided to pile on," he said.

# 164 years later, farm is still going strong

By **ALIYA HALL**  
Capital Press

It was 1853 when Joseph and Elizabeth Voss founded Voss Farms on 138 acres in the Willamette Valley. They had traveled from Wisconsin by wagon train the year before looking for a new start in the Oregon Territory.

Initially, they raised cattle, sheep and grains, but over the years the crops changed to reflect the market; Voss Farms added berries, orchard crops and Christmas trees.

Today, the farm raises primarily cereal grains.

Over 160 years later, Jeannette Voss and Julie Edy, the great granddaughters of the founders, are still farming. They applied to update their farm status from a century farm to a sesquicentennial, meaning the farm has remained in the family more than 150 years. They will be honored at the Oregon State Fair at 11 a.m. Saturday, Aug. 26, in the Picnic Grove Boots N' Brew Area.

"We thought it would be nice to have the recognition," Jeannette Voss said. "We're lucky. We want to keep it in the family as long as we can."

The sisters grew up on the farm and even though Jeannette went on to teach, she always helped out. Extended family has always lived on the farm with them, and Jeannette joked that it was "like the Kennedy compound."

In addition to the Voss family, 19 farms and ranches in 10 counties will be honored as century farms.

This brings the total number of century farms and ranches in Oregon to 1,200 and sesquicentennial farms and ranches to 39.

The farms and ranches will receive a certificate signed by Gov. Kate Brown and Director of the Oregon Department of Agriculture Alexis Taylor, as well as a historic sign that has the founder's name and the year the ranch or farm was founded.

The Oregon Century Farm and Ranch Program is managed by the Oregon Farm Bureau Foundation for Education, and supported by a partnership of the Oregon Farm Bureau, the State Historic Preservation Office, Oregon State University Archives and by donations.

To qualify for a century or sesquicentennial award, family farms must submit a formal application and meet the



Jeannette's parents Albert and Eugenia Voss — known as Bud and Jean — in the 1940s. Jeannette is the great granddaughter of Voss Farms founders Joseph and Elizabeth Voss.



Jeannette Voss

requirements of continuous family operation, a gross income from farm use of not less than \$1,000 per year for at least three of the last

five years and family members must live on or actively manage it.

Documentation for the application can include photos, original deeds, personal stories, or other records.

The century status recipients are:

• Iwasaki Bros. Inc: Founded in Washington County in 1917 by Yasukichi Iwasaki. Applicant is his grandson, Jim Iwasaki.

• Haskin Heritage Farm: Founded in Linn County in 1917 by Ernest and Lydia (Weirich) Haskin. Applicants are great grandson David H. and LaLona McCready.

• Kranberry Acres: Founded in Coos County in 1917 by Leslie Kranick. Applicants are grandson David Kranick and Marci Murray.

• Sievers Farm: Founded in Morrow County in 1907 by Will and Gertrude Sievers. Applicants are granddaughters Diana Arvieux, Rosemary Wood and Trudy Stenger.

• Four Ridge Orchards: Founded in Washington County in 1908 by Finis Brown. Applicants are grandson David and Bonnie Brown.

• Stubblefield Ranch: Founded in Umatilla County in 1876 by Francis Marion Stubblefield. Applicant is great granddaughter Margot Turner.

• Shady Brook Farm: Founded in Yamhill County in 1917 by Fred and Estella Bunn. Applicants are grandson Tom and Lona Bunn.

• Catrall Brothers Vineyards: Founded in Yamhill County in 1917 by John C.J. Sartone. Applicants are grand-nephews William "Bill" and Thomas "Tom" Catrall.

• Misner Family Farm: Founded in Linn County in 1902 by Henry and Alice A. Boyle. Applicants are great grandson Michael and Therese Misner.

• Bar M Ranch: Founded in Linn County in 1891 by Riley C. Margason. Applicants are great grandson Gary and Ingrid Margason.

• Haslebacher Farms: Founded in Marion County in 1911 by Ferdinand Haslebacher. Applicants are grandson Raymond and Mary Haselbacher.

• Belshe Ranch: Founded in Sherman County in 1916 by Clay and Susanna Belshe. Applicant is great grandson James Belshe.

• Oak Creek Farm/Coyle Family: Founded in Linn County in 1914 by W. Hiram Skeels. Applicant is grandson Alton Jefferson Coyle.

• Keel/Crofoot Ranch: Founded in Sherman County in 1917 by Frank and Lydia Kee. Applicants are Dell and Nikki Squire; Dell Squire is the nephew of Eben Crofoot Kee, who was a son of the founders.

• Basil and Mary Stupfel: Founded in Marion County in 1917 by Basil and Mary Stupfel. Applicant is grandson Mark Stupfel.

• Herring Farm: Founded in Yamhill County in 1916 by Fredrick C. Herring Sr. Applicant is Lea O. Herring, widow of the late Bland Herring, son of the founder.

• Charles M. Colton and Sons: Founded in Baker County in 1917 by William H. and Charles H. Colton. Applicants are Robert and his wife Lorene Colton — Robert is the great grandson of William — and Michael Colton, great-great grandson of William.

• Nicholson Home Ranch: Founded in Klamath County in 1898 by William Elmore Nicholson. Applicant is Nicholson Investments LLC. William "Bill" S. Nicholson lives on the ranch today. He is the grandson and Larry W. Nicholson is the great grandson of the founder.

• C and S Waterman Ranch: Founded in Coos County in 1917 by Charlie Frank and Mabel Waterman. Applicants are grandson Charlie and Sharon Waterman.

# Culvert case seen as Western water issue

## State appeals tribes' suit to Supreme Court

By **DON JENKINS**  
Capital Press

Washington Attorney General Bob Ferguson on Thursday asked the U.S. Supreme Court Aug. 17 to overturn a ruling that he said goes beyond how quickly one state will replace salmon-blocking culverts.

The reasoning behind the 9th U.S. Circuit Court of Appeals' order to take out more than 800 culverts in Western Washington could be applied to removing dams, restricting farming and altering century-old water rights in Western states, including Oregon and Idaho, where tribes have similar treaty rights, according to the attorney general.

"It could be the basis for all kinds of things," Washington Farm Bureau associate director of government relations Evan Sheffels said. "If you just replace the word 'culverts' with 'water rights,' you get a sense of how big this case could be."

Ferguson's appeal was the latest step in a lawsuit brought in 2001 by the U.S. government and 21 Washington tribes. A three-judge panel ruled last year that the culverts diminish fish runs and therefore violate treaties the tribes signed in 1854 and 1855. The judges said Washington was insufficiently concerned about promises that tribes would al-



Church Creek flows through a culvert under State Route 532 in Snohomish County, Wash., in 2013. Washington Attorney General Bob Ferguson has appealed a federal court order to remove more than 800 fish-blocking culverts.

ways be able to make a moderate living by fishing.

The court said the state could build bridges over streams, reroute roads or modify culverts to allow fish to pass. Replacing the culverts could cost about \$2 billion, though estimates vary.

The panel in May denied the state's motion to have the case heard by the full circuit court. In a dissenting statement, Judge Diarmuid O'Scannlain said the decision was "an ideal candidate for review" because the ruling could be "used to attack a variety of development, construction and farming practices, not just in Washington but throughout the Pacific Northwest."

"While such speculation may sound far-fetched, in actuality, it is already occurring," wrote O'Scannlain, whose opinion was supported by eight other justices.

Ferguson, a Democrat, said

in a statement that the state should speed-up replacing culverts and that he supports salmon restoration and respects treaty rights. But he said the circuit court's ruling was too broad.

In its brief to the Supreme Court, Washington asks the high court to reconsider whether the treaties guaranteed tribes a moderate living from fishing. The state also argues that the federal government approved the culverts and should bear responsibility, and that even if the culverts are removed other fish barriers will remain.

The brief elaborates on points made by O'Scannlain. "As the dissent pointed out, the same reasoning could be used to demand any number of changes in longstanding governmental and private practices, from the 'removal of dams' to altering farming practices to the elimination of century-old water rights," according to the Attorney General's Office.

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When major export markets, such as China, banned the company's GMO corn seeds from import, many corn farmers in the U.S., including Washington corn farmers, lost profits.

We are posting this notice for Washington corn farmers who have sold corn in Washington state on a commercial basis in the 2011 season and thereafter. If you fit this description and have an interest in learning more about this litigation on behalf of the class, please contact James S. Rogers or Elizabeth J. McLafferty at the Law Offices of James S. Rogers for more information at 206-621-8525 or via email at [info@jsrogerslaw.com](mailto:info@jsrogerslaw.com).

34-3/13D

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