

# Simplot loses dispute with farmer

## Judge awards ownership to Frank Tiegs

By **MATEUSZ PERKOWSKI**  
Capital Press

Northwest farmer Frank Tiegs has prevailed against the J.R. Simplot Co. in a legal dispute over the ownership of a Washington food processing company.

The relationship between Tiegs and Simplot, who once held equal ownership of Pasco Processing, turned acrimonious last year over the need to inject money into the company.

Tiegs wanted each owner to contribute \$3 million to Pasco Processing to resolve a loan default but Simplot didn't agree to the cash infusion. The National Frozen Foods Corp. in Albany, Ore., is wholly owned by Pasco Processing.

The conflict prompted Tiegs to invoke a contract provision allowing him to buy the company if the two partners deadlocked on a key decision.

Citing contract terms, Tiegs claimed he wasn't forced to pay anything for Pasco Processing due to its poor financial performance.

Both partners eventually filed lawsuits against each



Mateusz Perkowski/Capital Press File  
The National Frozen Foods facility in Albany, Ore., is part of Pasco Processing, of which farmer Frank Tiegs has won full ownership in a legal dispute with the J.R. Simplot Co.

other, with Tiegs seeking a declaration that he owned the company and Simplot accusing him of deliberately mis-

finding that he was allowed to take complete ownership of Pasco Processing due to the deadlock with Simplot.

The judge ruled against Simplot's argument that she consider additional evidence regarding Tiegs' credibility, finding it was irrelevant to deciding the contract dispute.

While it's "uncontested" that Tiegs tried to follow dispute resolution procedures, "Simplot refused to participate," which resulted in the deadlock, she said.

Simplot's claims that Tiegs tried to "manufacture" a "sham" deadlock are immaterial in terms of the contract, the judge said.

"The court concludes that in this case if a conflict looks, walks, and talks like a deadlock, it is a deadlock," Peterson said.

Before Tiegs could buy Pasco Processing, the contract did require him to reach a five-year deal for supplying Simplot with vegetables, the judge said.

However, Simplot effectively waived this requirement when it refused to negotiate the supply agreement with Tiegs, according to the ruling.

Similarly, Simplot disregarded contract terms by refusing to participate in mediation scheduled by Tiegs, Peterson said.

## Tree fruit trade group combination awaits federal review

By **DAN WHEAT**  
Capital Press



Mark Powers

Commission and Washington State Tree Fruit Association.

YAKIMA, Wash. — Two Northwest tree fruit trade organizations are awaiting review by the U.S. departments of Commerce and Justice before proceeding with plans to combine operations.

Northwest Fruit Exporters plans to become a dues-paying member of the Northwest Horticultural Council and contract its staffing and management with NHC. Both are based in Yakima.

The effort has been underway for more than a year and was expected to be completed this fall. NFE sought Department of Commerce approval to retain its Export Trade Certificate of Review, which allows it to receive shipment volumes and timing information of cherry exports to Japan to coordinate efficient Japanese inspections.

In July, the Commerce Department notified NFE the request will also be reviewed by the Justice Department, said Mark Powers, NHC president.

"We were hoping that wouldn't be necessary but now it's taking longer," he said, adding he likely won't know more until the end of the year.

The two nonprofit trade corporations plan to continue operating as separate legal entities so NFE can keep its Export Trade Certificate of Review and continue to be funded by grower assessments. NHC is funded by the Columbia Gorge Fruit Growers, Idaho Apple Commission, Oregon Sweet Cherry Commission, Washington Apple Commission, Washington State Fruit

The intent of the restructuring is staffing efficiencies and speaking with one voice on foreign market issues, Powers has said. Some NFE board members opposed the plan, saying they saw no need.

NFE will operate under the policy of its board but be managed by NHC. NFE will appoint two trustees to NHC's nine-member board. NFE will simplify its governance structure, no longer seeking nominations for board members from other industry organizations and eliminating apple-pear and cherry commodity committee governing boards.

NHC was incorporated in 1947 and focuses on national and international policy issues affecting tree fruit growers and shippers in Washington, Oregon and Idaho.

NFE was formed in 1978 to manage export market preparation procedures for fresh sweet cherries to Japan. In 1992, its role was expanded to include export of apples to Mexico, China and Japan.

In March 2014, at the initiative of the Apple Commission, apple market access regarding China, Japan, Vietnam, India, Australia, South Africa, Egypt and Israel were switched from NFE to NHC.

NFE continued handling apple market access to Mexico and protocols or work plans for the export of apples to foreign countries.

## Fruit industry keeps eye peeled on NAFTA

By **DAN WHEAT**  
Capital Press

YAKIMA, Wash. — Washington state exports close to \$500 million worth of apples, pears and cherries annually to Mexico and Canada and anything that impedes that is a very big concern, says Mark Powers, president of the Northwest Horticultural Council in Yakima.

Powers is the Northwest tree fruit industry's point person on North American Free Trade Agreement renegotiations. He's attended the third and fourth rounds and soon will go to the fifth round in Mexico.

"If something changes that affects our ability to send the volume or affects our profitability, that has serious impacts to our economy and growers here in Washington," Powers said. "Any changes that make our exports more difficult, we oppose."

The greatest worry so far for tree fruit and some other agricultural commodities is the U.S. Trade Representative's stated objective of "a separate domestic industry provision for perishable and seasonal products."

That objective has been set at the behest of Florida tomato growers — and supported by some berry, melon and pepper producers — who say Florida tomato growers have been going out of business because Mexico sells tomatoes in the U.S. at artificially low prices.

The issue comes down to fundamental fairness says the Florida Fruit and Vegetable Association.

Under current rules, U.S. producers can only bring an anti-dumping violation case against Mexican or Canadian imports if they represent 51 percent of their industry and can show a year-long impact of imports, Powers said.

Definitions of seasonal and perishable come into play and changes that would



Dan Wheat/Capital Press

The Northwest Horticultural Council is concerned about protecting tree fruit exports as it assists in new NAFTA negotiations.

allow regional dumping claims could be used against Northwest tree fruit or other U.S. commodities by grower groups in Mexico and Canada, he said.

"It's an import-export issue. Those who don't export are trying to protect themselves in U.S. markets and U.S. producers who do export are trying to make sure that whatever is done doesn't hurt our exports," Powers said.

There's a lot of concern across the U.S. heartland as corn and meat are the main exports to Mexico, he said.

Mexico has slapped tariffs

on U.S. apples several times for alleged dumping since NAFTA was implemented in 1994. The last one involved temporary tariffs that were lifted in June of 2016. Mexico determined Washington apples did not damage the Mexican apple industry. That outcome was partly due to goodwill between the two nations as politically the Mexican government moved against its own growers, Powers said.

There has been hope in the Washington tree fruit industry that renegotiating NAFTA could lessen the ability of Mexico to instigate more

dumping cases. Powers said he's working to ensure duty-free access for tree fruit into Canada and Mexico is not jeopardized, that fruit can be shipped through borders easily and that phytosanitary rules remain to protect against any "pest or disease attack on our plant resources."

Powers is on the U.S. Trade Representative's Agricultural Technical Advisory Committee on Trade for Fruits and Vegetables. It's one of several advisory committees whose members have security clearance to talk to and be briefed by negotiators.

## Water-quality trading surfaces in Washington

### Barriers high, but dairies hopeful

By **DON JENKINS**  
Capital Press

A Washington dairy industry official said Tuesday that he hopes an upcoming state report will rekindle interest in rewarding farmers who take extra steps to protect water quality.

Dairy Federation policy director Jay Gordon said water-quality trading, in which farmers earn and then sell pollution-reduction credits to downstream industries and sewer plants, could help businesses, cities, fish and farms.

"I'm tickled to death we're having this discussion," he said. "It has so much potential promise. That's why it's an idea that hasn't died."

The Washington State Conservation Commission is circulating a draft of the report, which names basins where water-quality trading might work best, but also highlights obstacles to such a program.

The underlying idea is that it's cheaper to reduce pollution by managing the land

than updating technology to treat effluent. The Environmental Protection Agency and USDA embrace the concept, and so does the Washington Department of Ecology. Trades, however, depend on matching facilities that need help to comply with discharge permits with reliable land projects.

"So far, we haven't found that situation where everything aligns," Ecology special assistant on water quality Kelly Susewind said.

The obstacles cited in the report include the fact that Washington's pollution-control law already bars farmers from releasing anything that tends to cause pollution into the water.

Bruce Wishart, a lobbyist for environmental groups, said it may be hard for conservation groups to support water-quality trading for that reason.

"Really, technically, there's nothing farmers can trade," he said. "This is a very significant difference between Washington state and some of the other states where water-trading schemes have been put in place."

Gordon agreed that recon-

ciling a program and the state pollution-control law "would be the big challenge," but said that water-quality trading could encourage farmers to take extraordinary measures, such as planting trees to shade streams or using new technology to extract phosphorous from manure.

Ecology outlined in 2010 how a program could work, particularly to reduce phosphorous, nitrogen and sediment. "We think there is room there," Susewind said. "The bottom line is, if the water is cleaner, we're all happy."

Ecology must concur with the conservation commission's final report. Susewind said the department is reviewing the draft.

The report's lead author, the conservation commission's habitat coordinator, Brian Cochrane, said the draft was "a conversation starter."

"It was my hope to identify some of the barriers and focus our efforts on going forward," he said.

According to the report, water-quality trading would work best in places where the supply and demand for credits were roughly equal.

## Idaho quinoa buyer to expand production

By **JOHN O'CONNELL**  
Capital Press

IDAHO FALLS, Idaho — A local quinoa supplier plans to significantly expand his contracted acreage of the nutritious, gluten-free grain next season, and to start commercial planting of a quinoa variety he bred himself.

This season, Jeremiah Clark worked with 27 growers who raised 1,600 acres of quinoa, which he cleaned and packaged at his facility.

"I see that (acreage) probably tripling next year," said Clark, who believes there's sufficient interest from his current grower base to handle the quinoa production expansion.

Clark said his quinoa demand far surpassed production this season, but contracts weren't finalized in time to get the extra acres planted.

"This year, we'll know by the end of November what we want to do," Clark said.

Clark also plans to look at property this winter for building a bigger cleaning facility, which could be completed in time to process next fall's harvest.

"We could do two or three times the capacity where



John O'Connell/Capital Press File

Jeremiah Clark plans to expand contracted production of quinoa in Eastern Idaho.

we're at, but it would be a good challenge," Clark said.

Next season, he'll also start the first commercial production of his own variety, Kailey, named for his daughter. Kailey yields better than the two Colorado varieties his growers have been planting, produces 10 percent larger kernels and matures about a month earlier. The early maturation should make it easier for growers to plant fall crops after quinoa, reduce the risk of crop damage due to extreme weather and enable growers to be done cutting their quinoa fields by the time potato harvest starts. Clark said he gave the University of Idaho 100

Kailey seeds, which UI planted in a greenhouse last winter. The greenhouse generated a couple of pounds of seed, which a grower in Oregon planted on 2 acres, providing a seed supply for next season's commercial production.

Clark said about 70 percent of his fields produced an adequate crop this season, but two or three fields experienced "complete failures" and weren't harvested. Clark said most of the problems were on dryland farms, where summer rainfall was insufficient. However, he also had a dryland field in the Ashton area that yielded as well as some of the irrigated fields.