

EPA aims to avoid jury in Clean Water Act lawsuit

Government asks judge to declare farmer liable for alleged violations

By **MATEUSZ PERKOWSKI**
Capital Press

EUGENE, Ore. — Rather than convince a jury, the U.S. Environmental Protection Agency wants a federal judge to declare that an Oregon farmer violated the Clean Water Act by stabilizing a riverbank.

Because the evidence “conclusively” shows large rocks were unlawfully discharged into the North Santiam River, the judge should proclaim the farmer liable instead of referring the matter to a jury, according to EPA.

The farmer, Bill Case of Linn County, Ore., argues a jury trial is necessary because it’s “hotly disputed” that his erosion-control activities ran afoul of the Clean Water Act.

Attorneys representing Case likely expect he’d be a sympathetic defendant to jury members.

The key question in the case is whether Case deposited large rocks under the river’s “ordinary high water mark,” below which the federal government has Clean Water Act jurisdiction, said Kent Hanson, an attorney representing the EPA.

The government’s experts have determined the farmer worked below that level based on historical photographs and LIDAR — or Light Detection and Ranging — a remote sensing technology, Hanson said during Feb. 21 oral arguments in Eugene, Ore.



Capital Press File

Farmer Bill Case of Linn County, Ore., points to the section of the North Santiam River where the Environmental Protection Agency claims he violated the Clean Water Act by stabilizing the riverbank. The Army Corps of Engineers and the Oregon Department of State Lands approved the work, according to Case.

ogy, Hanson said during Feb. 21 oral arguments in Eugene, Ore.

“The defendants have questioned that but have presented absolutely no evidence,” Hanson said. “They have no expert testimony.”

Crystal Chase, the farmer’s attorney, acknowledged the defendant hasn’t produced an expert witness, but said that’s not necessary to establish a controversy to be decided upon by a jury — rather than a “summary judgment” ruling by a judge.

“Expert testimony is not the only way to create a fact dispute,” Chase said.

The federal government hasn’t sufficiently shown that the entirety of Case’s bank stabilization project fell below the ordinary high water

mark, she said.

“There has not been a jurisdictional determination,” Chase said. “The government has not met its burden of proving where it is.”

If the EPA convinces the judge to rule that Case was liable, the judge would proceed to determine “remedies” for the violations. Case could be fined up to \$37,500 per day of violation dating back roughly nine years.

Attorneys for the EPA filed a lawsuit against Case two years ago, claiming that in 2009 he placed riprap and other fill materials in an 835-foot-long trench along the river without the required CWA permit.

During the oral arguments, U.S. Magistrate Judge Thomas Coffin appeared

skeptical the farmer wouldn’t realize he was working below the ordinary high water mark.

“It’s not all that difficult of a concept to grasp if you live along the river,” Coffin said.

Case argued the government’s lawsuit should be blocked because he was relying on the advice of another federal agency — the U.S. Army Corps of Engineers — in carrying out the stabilization project.

However, the EPA argues the farmer can’t rely on this doctrine — known as “equitable estoppel” — because government officials didn’t purposely mislead Case, even if he’s accurately representing their instructions.

“Does all that add up to a deliberate lie? The answer is no,” said Hanson. “It does not

add up to a pattern of false promises.”

Case countered that relying on “repeated, affirmative statements” is enough of an injustice to invoke “equitable estoppel” and block the lawsuit.

It’s not necessary to show the government intentionally lied, said Chase. “That’s not the standard.”

Apart from the original project in 2009, the EPA alleges that Case built an 800-foot-long dike along the river in 2012 and then extended it by 170 feet the following year, also without the proper permits.

Altogether, the EPA claims he deposited more than 20,000 cubic yards of fill material under the river’s “ordinary high water mark.”

According to Case, floodwaters had washed away roughly 2 acres of a field adjacent to the river, prompting him to undertake the original stabilization project in 2009 with the consent of the U.S. Army Corps of Engineers and Oregon’s Department of State Lands.

As for the activities in 2012 and 2013, Case argues that he was simply repairing dikes that had been built by the U.S. Army Corps of Engineers more than a half-century earlier, which doesn’t require CWA permitting.

However, the EPA claims he doesn’t qualify for the maintenance exemption because the dikes he rebuilt were more than twice as tall and three times wider than any pre-existing structure.

“What’s there is much bigger than what was there before,” said Hanson.

Washington House bill calls for counseling for farmers

By **DON JENKINS**
Capital Press

OLYMPIA — One day before the USDA predicted farm income will slump in 2018, the Washington House budget committee voted unanimously to study giving farmers and farmworkers free mental health counseling.

The timing was coincidental, but the events are related.

Farm advocates say failure haunts the industry and contributes to a high suicide rate.



J.T. Wilcox

“What you have in the farming world are people that are deeply committed,” said Rep. J.T. Wilcox, a Yelm Republican with a farming background. “They are people that perhaps have a tradition of not asking for a lot of help and not being interested in a lot of talk. But it is super high stress, and you have the unusual weight of generations on your shoulders.”

Wilcox said he introduced House Bill 2671 after reading a story about farmer suicides in the Guardian newspaper. His bill would create a task force to study providing counseling statewide. As a test, the state would contract for counseling services in one Western Washington county.

House Health Care and Wellness Committee Chairwoman Eileen Cody, D-Seattle, said it was “a bit shocking” to learn a study by the Centers for Disease Control and Prevention found farmers, loggers and commercial fishermen have the highest suicide rate among all occupations.

“I think it’s a great bill,” she said.

The Appropriations Committee advanced the bill to the full House Feb. 6. The next day, the USDA forecast that farm profits this year would drop by 6.7 percent to the lowest level since 2006.

Washington State Dairy Federation policy director Jay Gordon said there was program a little more than a decade ago to provide farmers with counseling. The program ran out of money after about 3 1/2 years, he said.

“As we’re seeing commodity prices today also getting fairly low, I think the timing on this bill is very good,” Gordon said.

The CDC survey cited in the bill was released in 2016. It looked at about 12,300 suicides in 2012 in 17 states. Washington was not one of the states, though Oregon was. Idaho and California also were not included.

The study sorted victims into 22 occupational categories. Farming, fishing and forestry formed one category. The suicide rate for that group was 84.5 deaths per 100,000 workers. The victims were overwhelmingly male.

The next highest suicide rate was for workers in construction and extraction industries such as mining, with 53.3 suicides per 100,000 people.

The CDC report speculated that factors contributing to suicide among farmers could include social isolation, potential for financial losses, barriers to and unwillingness to seek counseling, and access to lethal means of suicide.

The CDC noted the limitations of the study. The 17 states are not representative of the entire nation, and in 6 percent of the cases, the victims’ occupations couldn’t be determined. A forthcoming study on 2014 suicides in 32 states could provide more insight, according to the CDC.

It won’t be known until March whether House and Senate budget committees will fund Wilcox’s proposal. The Health Department estimates the bill would add \$485,000 to the current budget. The House and Senate budget committees are advancing more bills than can possibly be funded.

UI ag dean solicits support for dairy research center

By **SEAN ELLIS**
Capital Press

BOISE — The University of Idaho’s ag college dean told farm industry members that UI’s proposed \$45 million dairy research center would benefit all agriculture and its long-term impact will be profound.

Fundraising goals for the Idaho Center for Agriculture, Food and the Environment (CAFE) need to be met by June, and he encouraged them to consider helping the project financially.

The project is a heavy lift but the university is making good progress toward meeting the fundraising goal, Michael Parrella, dean of UI’s College of Agricultural and Life Sciences, told Food Producers of Idaho members Feb. 7 during their weekly meeting.

UI received \$10 million from the Idaho Legislature for CAFE last year and hopes



Sean Ellis/Capital Press File

Michael Parrella, dean of the University of Idaho’s College of Agricultural and Life Sciences, says research at the proposed Center for Agriculture, Food and the Environment will impact all sectors of Idaho agriculture.

to obtain \$5 million in state funds next year.

UI also sold some of its assets to raise \$15 million for the project and needs to raise \$10 million from outside sources. Realistically, that \$10 million needs to be lined up by June, Parrella said.

“I think we’re making good progress and we’re go-

ing to do that,” he said. “2018 is a critical year in terms of the fundraising component, (and) we are moving forward very aggressively with fundraising.”

He said the university needs farm groups’ moral support and added, “It would be nice to think there is some financial support behind that

as well.”

Parrella said dairy research will be a big focus of CAFE, but the facility will also conduct research that will impact every aspect of agriculture.

“CAFE is dairy centric but it’s a lot more than just dairy,” he said.

A central theme of the center will be water efficiency and protection and “water is a central theme to agriculture everywhere,” he said.

Parrella said CAFE will conduct dairy-related research on lagoons, nutrient management and surface and water management, which have been the subject of recent lawsuits.

“Those issues are not going to go away. CAFE will directly address those issues,” he said.

The center will also conduct research on forage cropping and agronomy, soil health and fertility, production management, food

safety, labor management, animal genetic improvement, precision agriculture, commodity risk management and food science and manufacturing.

“It’s relevant to more than just dairy. It’s much, much broader than that,” Parrella said. “There is something in CAFE for everyone.”

Rich Garber, director of governmental affairs of the Idaho Grain Producers Association, encouraged fellow FPI members to consider how they can support the center.

“I really think this is a rising tide that can lift all of our boats,” he said. “This is an opportunity we are not going to have again. I hope we take it very seriously.”

While addressing the House Agricultural Affairs Committee Feb. 9, Idaho Barley Commission Administrator Kelly Olson encouraged lawmakers and the agriculture industry to support CAFE.

Panel discusses hurdles to passing new farm bill

By **CAROL RYAN DUMAS**
Capital Press

Finding funding for current farm bill programs will be the biggest factor in upcoming debates over the new legislation, Craig Jagger, former chief economist for the House Agriculture Committee, says.

He took part in a forum last week that was sponsored by the Farm Foundation, an agricultural policy institute. Jagger was one several professionals involved in deliberations over past farm bills who discussed the issues in play for the next farm bill.

The Congressional Budget Office’s baseline for agriculture is the only certain source of funds for the next farm bill, and it’s not enough to fund all the current farm bill programs, he said.

Thirty-seven current provisions and programs have no baseline funding after 2018. Not only is the budget situation tighter for this farm bill, but so are the budget rules. The House and Senate agriculture committees will be lucky if they can maintain current funding, he said.

Patrick Westhoff, director of the Food and Agricultural Policy Research Institute at the University of Missouri,



said one of the biggest issues is whether lawmakers can find a compromise on the Supplemental Nutrition Assistance Program that would pass. SNAP is seen as a key to gaining farm bill support from urban members of Congress.

Joe Outlaw, co-director of the Agricultural and Food Policy center at Texas A&M University, said uncertainty over current events will also be a big factor.

Trade relations with China are high on the list. Renegotiation of the North American Free Trade Agreement, immigration reform, welfare reform and the primary and November elections could also divert congressional attention, he said.

Farmer and former Indiana Farm Bureau President Don Villwock — who also served as a state executive director of

the Agricultural Stabilization and Conservation Service and a liaison to former U.S. Sen. Richard Lugar — said politics are going to be the biggest factor in the current highly partisan environment.

Crop insurance is the No. 1 topic in the heartland, and farmers are hearing all kinds of stories of what might happen to crop insurance, he said.

“We are extremely, extremely nervous,” he said.

USDA is predicting farm income will go down 6.7 percent this year and be the lowest since 2006. Farmers growing many commodities are struggling with breakeven or below breakeven prices, and that makes bankers nervous. Bankers are already struggling to make cash flows work for farmers, and crop insurance is not voluntary in that equation, he said.

Consumer group backs states in egg, meat lawsuits

By **CAROL RYAN DUMAS**
Capital Press

The Center for Consumer Freedom has filed amicus briefs with the U.S. Supreme Court, imploring the justices to hear two lawsuits challenging laws in California and Massachusetts that hinder sales of eggs and meat products from other states.

The center believes the cases are important because the California and Massachusetts laws are unconstitutional, said Will Coggin, CCF managing director.

California banned the sale of conventionally raised eggs in 2015, following a successful 2008 ballot initiative outlining housing standards for laying hens that would provide more space than conventional practices.

In December, Missouri and 12 other states filed a motion for permission to file a complaint against the ban in the Supreme Court.

The complaint challenges California’s attempt to dictate the manner of agricultural production in other states, increasing costs to egg producers and consumers. It also cites increased costs to

other states whose agencies such as schools and prisons buy eggs and to state-owned egg-production facilities.

A similar motion was filed with the Supreme Court by Indiana and 12 other states against Massachusetts in its attempt to dictate conditions of housing for poultry, hogs and calves in every other state.

Massachusetts voters passed a ballot measure in 2016 that bans the sale of conventionally produced eggs, pork and veal in the state beginning in 2022.

The complaint against the state, also filed in December, cites Massachusetts’ attempt to impose regulatory standards on the entire interstate market for eggs, pork and veal.

Both complaints contend the restrictions violate the interstate commerce clause of the Constitution.

“California and Massachusetts shouldn’t get to dictate how farmers in Iowa, North Carolina or any other state care for their animals,” Coggin said.

Animal-care decisions should be made by farmers and veterinarians, not at the ballot box, he said.