USDA defends checkoff funding of state beef council

Lawsuit has implications for beef checkoff spending

By MATEUSZ PERKOWSKI
Capital Press

PORTLAND — The federal government claims it hasn't violated the free speech rights of ranchers by requiring them to fund a state beef council with checkoff dollars.

Last year, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America won a preliminary injunction prohibiting the Montana Beef Council from using beef checkoff dollars for advertising campaigns.

Under the national beef checkoff program, ranchers pay an assessment of $1 per head to pay for promotions overseen by USDA. Half of that money collected in Montana was allocated to the Montana Beef Council.

U.S. District Judge Brian Morris ruled in 2017 that the state beef council is organized as a private corporation, precluding it from deciding how to spend money collected from ranchers by USDA.

"The government cannot compel citizens to subsidize a private advertising program for the sole purpose of increasing demand for a product," Morris said.

That ruling is now being challenged by USDA before the 9th U.S. Circuit Court of Appeals, which heard oral arguments in the case March 5 in Portland, Ore.

If the judge's reasoning prevails, R-CALF expects that other state beef councils will also lose checkoff funding, said Bill Bullard, the group's CEO.

Although the Cattlemen's Beef Board now receives the full $1 fee, R-CALF considers that "the lesser of two evils," said Bullard.

Otherwise, the state beef council sends money to the "Federation" division of the National Cattlemen's Beef Association, which opposes many of R-CALF's policies, Bullard said.

Money spent on promotions by the Cattlemen's Beef Board — which is directly overseen by USDA — is a form of government speech that doesn't violate free speech rights because it can be altered through the political process.

However, the Montana Beef Council isn't under the USDA's direct control because the federal agency can't appoint or remove its board members or direct how it spends checkoff dollars, the judge said.

During oral arguments before the 9th Circuit, an attorney for USDA argued the Montana Beef Council's generic promotions are actually government speech because they're effectively controlled by the federal agency.

The state beef council's messages are still subject to the same "statutory and regulatory constraints" as the promotions funded by the national Cattlemen's Beef Board, according to USDA.

The USDA can "certify" a state beef council to qualify for the program, which is analogous to an appointment, or "decertify" the council, said Nicolas Riley, an attorney for the government.

The USDA can investigate the state beef council after receiving a complaint alleging its promotions have violated the rules, and can review its budget and other records, the federal agency said.

Ranchers also aren't compelled to fund the state beef council's promotions due to an "opt-out" mechanism, in which case all of their checkoff dollars go to the national program, the federal government argued.

This opt-out option weighs against the need for a preliminary injunction, Riley said.

David Muraskin, an attorney for R-CALF, said the Montana Beef Council was correctly ruled ineligible to spend checkoff money because such councils "are supposed to be independent, separate bodies."

Unlike the Cattlemen's Beef Board, the state council is not democratically accountable to the ranchers who pay checkoff fees, he said. "Our constitutional right is to have actual democratic means to speak against the council."

Dan Wheat/Capital Press

Early morning sunlight shines on pruners in Mt. View Orchard in East Wenatchee, Wash., on Feb. 13, as temperatures fell after a warm streak. Buds on these Kanzi apple trees were fine but farther south some cherry buds were damaged by freeze.

Cherry buds sustain light freeze damage

By DAN WHEAT
Capital Press

YAKIMA, Wash. — Cherry buds from Quincy south to the Tri-Cities received a light thinning while apricots took a harder hit from a mid-February freeze that followed a streak of warm weather.

That's a preliminary assessment from B.J. Thurlby, president of Northwest Cherry Growers and the Washington State Fruit Commission, both in Yakima.

"So far, most folks assume they still have a full cherry crop. I think apricots, peaches and nectarines in the early districts were hit the hardest," Thurlby said, adding some growers in the Tri-Cities and up the Snake River Valley believe they've lost 20 percent of apricot buds.

Apples and pears are more cold hearty than apricots and cherries. Everything north from Chelan is fine because the region is so far behind Wenatchee and the south in degree days (the accumulation of daytime temperatures above 43 degrees since Jan. 1), Thurlby said.

Apricots are a minor crop compared to cherries.

"A big crop of cots is 7,000 tons. A normal crop is closer to 5,500 tons and I would guess this year's will be 5,000 or a little less," Thurlby said.

Cherries probably took a more widespread light thinning of less than 5 percent, rather than spotty damage, he said. Loss is really close to negligible but could have been worse had the warm period lasted any longer before the freeze, he said.

A full crop would be 22 million to 23 million, 20-pound boxes while last year's record 26.4-million-box crop was abnormally large due to perfect pollination weather, he said. There were more five to seven cherries per bud last year versus what looks like a normal one to three this season, he said.

The warm weather ran from Jan. 24 through Feb. 8 with Pasco 10 degrees above normal and then 20 degrees above normal for a couple days, said Nicholas Loyd, meteorologist at the Washington State University AgWeatherNet in Prosser.

The region high was 69 degrees in Yakima on Feb. 8. The cold snap took Yakima's nighttime low to 11 on Feb. 23. Regional temperatures averaged 15 degrees below normal from Feb. 19 to 23, Loyd said.

It was the warmest early warm spell since 2005 and has set up a long frost season, Thurlby said. Growers used a lot of wind machines and propane heaters to warm buds during the freeze, he said.

"A grower in Selah, using fans and heating, had interior orchard temperatures of 15 degrees and felt 13 was kill. If guys were heating they were probably perfectly fine," Thurlby said.

John Doebler, owner of the state's earliest cherry orchard in Mattawa, said he lost 3 to 5 percent of his Chelan cherry buds and 2 percent of his Bing buds.

"It's awfully early. I hate to be losing anything, but I'm not losing sleep over it," Doebler said. "We ran wind machines and burned our fair share of propane."

He said he finished winter pruning on time because of less lowland snow than last year.

Scott McDougall, president of McDougall & Sons in Wenatchee, said he had minimal site-specific cherry damage in Mattawa.

Brenda Thomas, president of Orchard View Farms in The Dalles, Ore., said it's been a great winter for getting work done and that the company is on or ahead of schedule on pruning.

"We possibly have some damage on early blocks (lowland orchards) but everything else looks fine," she said.

Kevin Corliss, vice president of viticulture in Patterson for Chateau Ste. Michelle Winery in Woodinville, said wine grape buds are fine because they lag behind tree fruit.

Idaho potatoes set production value record in 2017

By SEAN ELLIS
Capital Press

John O'Connell/Capital Press

Potatoes are harvested in Pingree, Idaho. Idaho's 2017 potato crop was valued at $1.19 billion, which is 23 percent higher than the state's 2016 crop, 30 percent higher than in 2015 and a record for the state's most iconic crop.

BOISE — Idaho's most famous crop, potatoes, set a production value record in 2017 despite spud growers planting 15,000 fewer acres than they did in 2016.

Idaho's 2017 potato crop was valued at $1.19 billion by USDA's National Agricultural Statistics Service. That's 23 percent higher than last year's total of $968 million and 14 percent higher than the previous record of $1.04 billion set in 2011.

Idaho leads the nation in potato production.

Idaho's 600 potato farmers harvested 309,000 acres of spuds last year, down 5 percent from 324,000 acres in 2016. But the average price for potatoes grown in Idaho was $9.05 per hundredweight in 2017, up 30 percent from $6.95 in 2016.

"Fresh prices rebounded pretty good and returns are pretty good. I think it was a pretty good year for spud growers," said American Falls grower Jim Tiede.

Aberdeen potato grower Ritchey Toevs said that one of the takeaway lessons from the 2017 potato crop is that "with only a slight reduction in supply, we were able to increase the value significantly."

"It shows that getting prices up a little bit makes a huge difference," said Idaho Potato Commission President and CEO Frank Muir.

The higher prices and production value are welcome news following several years of lackluster prices, said Oakley farmer Randy Hardy. But he also said there is some concern about growers over-planting this year in response to the higher prices.

"When potato prices are up, there is always that tendency to want to make the most of it," he said. "I'm hopeful that growers will be disciplined enough to stay at the level we've been at...."

Tiede said he hopes potato farmers "will do some judicious thinking when they are deciding their planting intentions" for 2018.

Muir said the IPC will be prepared to help move whatever amount of spuds Idaho growers produce this year.

"That's our mission: whatever potatoes are planted and harvested, we're going to figure out how to move them," he said. "We always anticipate and plan accordingly."

According to NASS, total U.S. potato production was valued at $4.56 billion in 2017, up 15 percent from 2016.

Washington ranks No. 2 in the nation in potato production and its 2017 crop was valued at $888 million, up 9 percent over the state's 2016 crop. The average potato price in Washington last year was $8.97 per hundredweight, up from $7.70 in 2016.

U.S. Supreme Court sets date to hear appeal on treaty rights

By DON JENKINS
Capital Press

The U.S. Supreme Court will hear oral arguments April 18 on whether six treaties signed in 1854 and 1855 guaranteed 21 Western Washington tribes enough fish to earn a "moderate living."

The case, Washington v. United States, stems from the state's appeal of an order by the 9th U.S. Circuit Court of Appeals to replace 817 salmon-blocking culverts by 2030. The state attorney general's office said in written arguments filed last week that the reasoning behind the culvert order could render federal dams illegal.

"This court should decline to recognize this new right 160 years after the treaties were signed," the state argues.

Farm groups in the West are watching the case closely. The six treaties at issue are among 11 the federal government signed with tribes in what is now Washington, Oregon, Idaho and Montana. Farm Bureau chapters in those states last year filed briefs asking the high court to take up the appeal.

The U.S. Justice Department and tribes have yet to file written arguments. In previous filings, they argued the circuit court's ruling was confined to culverts under state roads in Washington and didn't raise broader issues for the Supreme Court to resolve.

The hearing will be the latest in litigation initiated in 1970 by the Justice Department on behalf of the tribes.

The tribes gave up land and were promised a share of a seemingly inexhaustible supply of fish. With salmon abundance declining, the tribes and Justice Department sued Washington in 1970. The litigation has never stopped. The federal government and tribes specifically targeted Washington culverts beginning in 2001.

The state acknowledges that in previous rulings dating back more than a century the Supreme Court has upheld the rights of tribes to fish in traditional places, to be exempted from certain state fishing regulations and to have a fair share of the available fish. The state claims the 9th Circuit Court invented a new and "amorphous" right for tribes to make a moderate living.

"That untenable standard makes it impossible to measure compliance, would likely render illegal many past actions that impacted salmon (such as federal dams), and would make virtually any significant future land use decision in the Pacific Northwest subject to court oversight to determine treaty compliance," the state argues.

The tribes have approximately 43,000 enrolled members and harvest about 2.5 million salmon annually, according to court records. The tribes argue that their treaty rights would be meaningless without healthy fish runs.

The Supreme Court also will consider whether the federal government is being heavy-handed. The federal government signed the treaties, designed the culverts and then sued the state to remove them. The state argues that in many places replacing culverts won't help salmon because fish barriers not owned by the state will remain.

The tribes participating in the suit are the Confederated Tribes and Bands of the Yakama Nation, Hoh Indian Tribe, Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, Lummi Nation, Makah Tribe, Muckleshoot Indian Tribe, Nisqually Indian Tribe, Nooksack Tribe, Port Gamble S'Klallam Tribe, Puyallup Tribe, Quileute Indian Tribe, Quinault Indian Nation, Sauk-Suiattle Tribe, Skokomish Indian Tribe, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Suquamish Indian Tribe, Swinomish Indian Tribal Community, Tulalip Tribes and Upper Skagit Indian Tribe.

Seven states, led by Idaho, also asked the Supreme Court to hear the appeal.

Eleven states, led by Idaho, argue that if Washington loses its case land-use rules across the country will be at risk of being subordinate to tribal treaty rights.

The states filed a brief with the high court March 2 supporting Washington's appeal.