

# Idaho legislators vote to reimburse ranchers

By CAROL RYAN DUMAS  
Capital Press

The Idaho House on Monday voted to reimburse attorney fees of two ranchers who prevailed in a landmark lawsuit against the federal government to protect their stockwater rights on federal land.

Several legislators argued the precedent-setting 2007 victory, in which the Idaho Supreme Court upheld the stockwater rights of Paul Nettleton of Joyce Livestock and Tim Lowry of LU Ranching Co., restored the state's sovereignty over water.

In a voice vote, legislators supported a proclamation to pay the Owyhee County ranchers \$300,000 each from the state's Constitutional Defense Fund to offset legal fees.

The issue of state sovereignty over stockwater is rooted in the Snake River Basin Adjudication, a process that began in 1987 to determine water rights



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Idaho's Capitol in Boise. The state House has approved a resolution to reimburse the legal fees of two ranches that won a landmark Supreme Court case over water rights.

in the Snake River Basin.

The state assured ranchers their water rights on grazing land were constitutionally protected because their livestock are putting the water to beneficial use, Scott Bedke, speaker of the House and an Oakley

rancher, said.

On that assurance, many ranchers didn't file a claim in the adjudication court, but he and others — including the Owyhee ranchers — did.

During the process, the Bureau of Land Management

claimed that it, and not grazing permittees, held those water rights on federal land — and the state did not contest it, he said.

"The feds claimed that we were acting as their agent. Of all the things I'm sure of, I was sure that was not the case. I was not acting as an agent of the federal government putting the water to beneficial use," he said.

In the end, he and other ranchers who had filed objections to BLM's claims settled with the federal government. But the Owyhee ranchers chose to stand on principle — and arguably some bad legal advice that they could win attorney fees in the Idaho Supreme Court, he said.

The adjudication continued until 2014, and every stockwater right after the 2007 court ruling was given to permittees. Everything before that went to the federal government.

"So there's this unequal

treatment under the law. Now we're doing our best to unring that bell legislatively," trying to codify the ruling into Idaho law, he said.

"But for these two Owyhee County ranchers, we wouldn't even be having this discussion. They on their own dime, by their own volition, perfected a public right for everyone," he said.

For whatever reason, the state did not stand up for those rights. These private entities did, and every permittee in the state benefits from that, he said.

"I think that there's a wrong out there that needed to be righted. And I think this proclamation is a step in that direction," he said.

Without those lawsuits, the state would have zero claim over its sovereignty to stockwater rights, said Rep. Megan Blanksma, R-Hammett, who introduced the proclamation.

The legal fees of the Net-

tleton and Lowry ranches were at least \$1 million each, and they negotiated them down to \$300,000 each, said Rep. Christy Zito, R-Hammett.

"These ranchers fought not just for the sovereignty and survival of their ranches. They fought for our state, and it was our state's place to do that for them," she said.

"Rep. John Vander Woude, R-Nampa, said the ranchers have gone into debt and put their own businesses at risk to protect water rights in the state.

"These ranchers were brave enough to fight our state and the federal government and actually ended up protecting our water rights in the state," he said.

Rep. Maxine Bell, R-Jerome, agreed the ranchers were owed a debt but questioned whether reimbursement from the Constitutional Defense Fund was authorized or prudent.

## OSU Extension adds pest management plans to catalog

### Initial grant for onions, cranberries, cherries, hazelnuts

By GEORGE PLAVERN  
Capital Press

Oregon State University Extension is adding several crop-specific pest management plans to its repertoire, working in collaboration with farmers, researchers, agribusiness and industry representatives.

The latest report on Treasure Valley onions in southeast Oregon and southwest Idaho was published last month in the OSU Extension Catalog. It identifies management priorities and critical needs for major pests including onion maggots, thrips, bulb mites and cutworms.

A 24-member work group met in February 2017 to discuss the issues they are facing at every stage of the crop's development. Farmers grow 20,000 acres of dry bulb onions in the Treasure Valley, which accounts for 30 percent of U.S. production and up to \$140 million in annual farm gate value.

Katie Murray, program leader for the Integrated Plant Protection Center at OSU, said the management plan is not a how-to guide, but a road map for the university and industry to learn what growers need to do a better job.

"We're trying to open their toolbox," Murray said. "It kind of helps to show where the gaps are."

Among the top-priority critical needs were developing a pest management risk index to minimize crop damage, increasing resistance management education for growers and developing more pest-resistant onion varieties.

"Part of what they were wanting was a more holistic view of whole-season management," Murray said.



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An onion field near Ontario, Ore. The Oregon State University Extension Service is adding several integrated pest management plans to its catalog, including one for onions.

Integrated pest management planning is typically funded by the USDA. In 2016, Murray applied for additional funding from the USDA National Institute of Food and Agriculture's Crop Protection and Pest Management Program to develop plans that she said takes a different tack on the conversation using the "PAMS" approach — which stands for "Prevention, Avoidance, Monitoring and Suppression."

"Basically, we've changed the way we talk about current management," she said.

Murray was awarded \$215,000 in 2016 to develop pest management plans for onions, as well as cranberries, cherries and hazelnuts. The cranberry plan was completed last summer, Murray said, while workshops for the cherry and hazelnut groups were held in January and February, respectively.

Like the onion plan, the other three crop reports will be published through the OSU Extension Service, Murray said, to maximize their outreach.

"I think it's very clear the value," she said. "Not only are we identifying (grower) needs, but getting those met by building a system that can respond to those."

help and care they need and deserve," Emmer said in introducing the bill.

The bill would reauthorize the Farm and Ranch Stress Assistance Network program, which was authorized in the 2008 Farm Bill but never funded.

Renewing that program would give states resources to provide mental-health services for farmers and ranchers, Emmer said.

National Farmers Union has long advocated such resources and said the legislation would provide vital assistance to farmers and ranchers who are struggling amid a five-year, 52 percent overall decrease in net farm income.

"Farming and ranching is a highly stressful occupation. As the downturn in the farm community worsens, many producers are finding

## WSU, spinoff sue each other over Cosmic Crisp

By DAN WHEAT  
Capital Press

PULLMAN, Wash. — Washington State University and a private company it created and partly owns, Phytelligence, are suing each other over the rights to propagate and sell Cosmic Crisp apple trees.

Cosmic Crisp is a WSU-bred apple expected to hit stores in 2019. The industry hopes it will become the new state apple.

"We have no choice but to vigorously defend our intellectual property rights against this serious breach of contract and infringement on our patent," Chris Keane, WSU vice president for research, said in a news release.

Seattle-based Phytelligence was founded in 2012 by WSU genomist Amit Dhingra, who was recently promoted to full professor and is chief science officer at Phytelligence.

"WSU owns equity in Phytelligence and receives royalties from it related to other technologies and solutions the company has licensed from the university," said Janae Frisch, a Phytelligence spokeswoman.

The company uses micro-propagation protocols, techniques and software Dhingra developed to produce rootstocks, fruit trees and grapes faster and cheaper than traditional nursery methods and to ensure their correct identity through high-resolution genetic fingerprinting.

Phytelligence has more than 100 employees and 8 acres of greenhouses in Burien, near Seattle, a tissue culture laboratory in Portland and an office in Pullman.

On Feb. 26, Phytelligence sued WSU in King County Superior Court in Seattle, claiming its 2012 contract with WSU gives it the option to propagate Cosmic Crisp for commercial sale as a provider or seller in WSU licensing programs.

Phytelligence alleges WSU and its distribution partners — Proprietary Variety Management (PVM) and Northwest Nursery Improvement Institute (NNII) — have deprived



Dan Wheat/Capital Press File

The Cosmic Crisp apple. Washington State University and a spinoff company that it partially owns have filed suit against one another over propagation of the new apple variety, which WSU developed.

it of obtaining a commercial license to sell trees.

On March 8, WSU filed a suit in U.S. District Court in Seattle saying Phytelligence can't sell trees without a separate university contract. The suit alleges Phytelligence sold 135,000 trees to Evans Fruit Co., Cowiche, in April 2016 without such a contract.

In its suit, WSU said it gave Phytelligence three options to obtain a commercial license in September: membership in NNII, a contract with an NNII nursery or a contract with a grower.

"Phytelligence declined to pursue any of these options and never applied to become a member of NNII," WSU states in its suit.

WSU terminated its contract with Phytelligence on Jan. 16 and demanded the company destroy its Cosmic Crisp trees. WSU is seeking compensation for patent infringement and attorney fees.

WSU also filed a counter suit March 8 in King County Superior Court denying the allegations in Phytelligence's suit.

Ken Hunt, Phytelligence CEO, denied the company sold 135,000 Cosmic Crisp trees to Evans Fruit and said Phytelligence's effort to obtain a commercial license has been met with "repeated delays and misinformation, ultimately preventing propa-

gation." Growers are increasingly frustrated with unnecessarily restricted access to Cosmic Crisp, he said in a statement.

"We recognize and value WSU's broad and continuing support of Phytelligence; our concerns in this matter stem from the actions of a few individuals within the university," Hunt said, adding the company continues to work with WSU to resolve the issues.

Phil Weiler, WSU vice president of marketing and communications, said WSU has copies of sales orders and invoices indicating the 135,000 trees were sold to Evans Fruit.

Frisch, the Phytelligence spokeswoman, said the sales orders and invoices were in anticipation of Phytelligence securing a propagation license and that Phytelligence began growing rootstock for those orders. Subsequently, when it was clear it would not have a license, Phytelligence offered to graft buds of other varieties to that rootstock or refund Evans Fruit's money, she said. Evans opted for the refund, she said.

Phytelligence placed about 200 Cosmic Crisp budwoods, not trees, in the ground at Evans Fruit in preparation for grafting but retrieved them and is discussing with WSU a mutually acceptable escrow facility for them, Frisch said.

Phytelligence's contract gave it the option of obtaining a license from WSU or its agent, which would be PVM, Frisch said. NNII is not a WSU agent so is an appropriate entity for Phytelligence to secure a license from, but in a gesture of good faith Phytelligence has requested NNII membership application materials, she said.

"Thus far nothing has been received despite several repeated and unfulfilled promises by WSU that they would assist in this regard," Frisch said.

Bill Howell, managing director of NNII, said Phytelligence asked him how to apply, that he told them they could via a letter or email and that they never did.

Phytelligence needed to know membership requirements before asking to join and NNII would not provide that, Frisch said.

Howell said Phytelligence needs to be a state certified nursery, which it is, needs NNII board approval to join and pay a \$10,000 to \$40,000 initiation fee.

"The board considers if you are actively working to improve the industry," Howell said, adding a willingness to work with people to accomplish things and honoring intellectual properties are major considerations. The lawsuit draws that into question, he said.

## U.S. House bill addresses high risk of suicide among farmers

By CAROL RYAN DUMAS  
Capital Press

Legislation introduced in the U.S. House last week is aimed at making mental-health treatment more available for farmers and ranchers.

The Stemming the Tide of Rural Economic Stress and Suicide (STRESS) Act, HR 5259, was introduced by Tom Emmer, R-Minn., to address the unacceptably high rate of suicide in the farm community.

"Those who work in agriculture face uniquely high-stress challenges ranging from social isolation to strong dependence on factors outside of their control. Combined with the incredible lack of mental health treatment available, our farmers have been left to suffer alone in the shadows without the



themselves in a state of financial crisis," Roger Johnson, NFU president, said in a press statement.

Unfortunately, many lack access to the support they need in times of extreme duress, he said.

The National Young Farmers Coalition said introduction of the STRESS Act sends an important message to farm families that they are not alone.

"When these challenges are left unspoken, swept under the rug or stigmatized, our entire community is

impacted," Andrew Bahrenburg, the coalition's national policy director, said in a press statement.

Mental health impacts all farmers and ranchers, and young farmers everywhere can experience the social isolation, financial stress and emotional fatigue that comes from pouring everything they have into their farms, he said.

"We need to do a better job of ensuring they have the resources and support to get through it," he said.

The suicide crisis in farm country has been going on for some time, with many people pointing to the 1980 farm crisis as the real spike in agricultural suicide rates.

The suicide rate in the general U.S. population in 2014 was 13 per 100,000 people, according to the Centers for Disease Control and Prevention.

Suicide rates within the agricultural community are much higher.

While not weighted for the U.S. and limited to data from 17 states, CDC's examination of more than 12,000 suicides in 2012 found the suicide rate in farming, fishing and forestry was 84.5 per 100,000 people in those occupations.

That group had the highest suicide rate among 22 occupational groups measured, followed by the construction and extraction industries at 53.3.

It was nearly triple the suicide rate of those in law enforcement and fire fighters, which was 30.5.

In addition, the rate of suicide in agriculture is more than double the rate in military veterans — 35.3 per 100,000 veterans according to the latest data by the U.S. Department of Veterans Affairs.