

Ranchers, government defeat 15-year-old anti-grazing lawsuit

Judge dismisses environmental complaint filed 15 years ago

By MATEUSZ PERKOWSKI
Capital Press

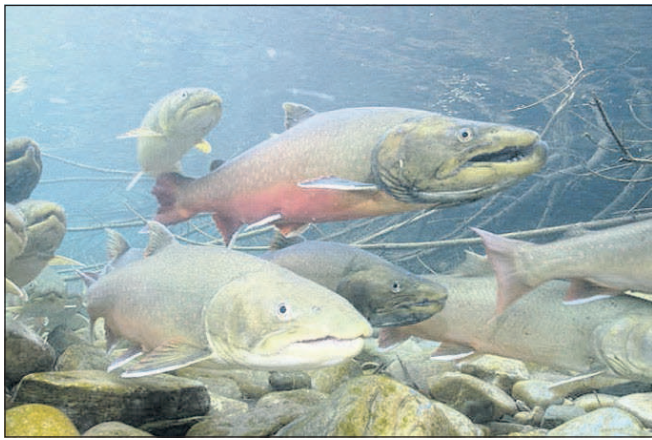
Ranchers and the federal government have defeated a 15-year-old environmentalist lawsuit that claimed grazing imperils threatened bull trout in Oregon's Malheur National Forest.

U.S. District Judge Michael Mosman has dismissed the complaint, which was originally filed by the Oregon Natural Desert Association and the Center for Biological Diversity in early 2003.

The environmental plaintiffs sought to prohibit livestock grazing on "units of concern" in seven allotments along the Malheur and North Fork rivers, arguing the waterways contain only 100 bull trout despite having the capacity for 4,000 of the protected fish.

Last year, however, U.S. Magistrate Judge Paul Papak dealt the case a blow when he found that grazing authorizations hadn't likely caused the decline in bull trout populations, which have suffered from the introduction of non-native fish, dam-building and other factors.

Mosman has now agreed with the recommendation to throw out the lawsuit because the plaintiffs haven't estab-



U.S. Fish and Wildlife Service

A judge has dismissed a 15-year-old lawsuit over bull trout brought by environmentalists.

lished the U.S. Forest Service violated the National Forest Management Act and Wild and Scenic Rivers Act by approving grazing plans.

Jeff Hussey, a rancher affected by the lawsuit, said he's excited the judge took the time to look at the science and "sort through the mumbo-jumbo."

The ruling recognizes that ranchers in the area want to graze livestock in an ecologically and economically sustainable way, he said.

"We're not trying to take advantage of the system," Hussey said. "We just want to run our cows and run them right."

Elizabeth Howard, attorney for the ranchers, said the ruling validates the Forest Service's methods for implementing grazing and monitoring its effects.

It also shows that plaintiffs overestimated the amount of paperwork that's necessary

for the agency to comply with conservation plans for fish, she said.

While the ruling is a victory, two ranches preferred to sell their grazing permits rather than continue with the lengthy litigation, Hussey said.

"That's how hard it's been on some of these guys. They just gave up," he said.

Mac Lacy, attorney for ONDA, said the group is still reviewing the decision but is disappointed the "court failed to explain why it was reasonable for the Forest Service to collect, but then ignore" data regarding "riparian management objectives" under the agency's strategy for preserving inland fish.

Ranchers who rely on the grazing allotments, which span tens of thousands of acres, intervened in the case to defend the government's grazing authorizations. A major point of contention

in the case was whether the Forest Service was properly monitoring stream conditions to ensure grazing doesn't degrade the bull trout's habitat.

Lacy had argued the agency was relying on "proxy" data — such as grass stubble height and alteration to stream banks — that didn't reflect worsening conditions in the waterways.

"These failures, to the extent they're showing up in the record, are getting worse over time," Lacy said during oral arguments last year.

Egg nests laid by bull trout are trampled by cattle, which also raise water temperatures to unhealthy levels by widening streams and denuding vegetation, the plaintiffs claimed.

Stephen Odell, attorney for the Forest Service, countered that the environmental plaintiffs were "cherry-picking" data from problematic "hot spots" that don't represent broader conditions.

Forest Service scientists have determined streambank alteration and stubble height are useful measures of progress that show conditions are improving, he said.

"The record does not show ongoing negative effects from grazing," Odell said during last year's oral arguments.

Over the objections of the environmental groups, both judges overseeing the case agreed the Forest Service was permitted to analyze habitat health on the "watershed or landscape scale, rather than stream by stream."



Community to Community Development

Striking farmworkers show their visas after being fired in August by Sarbanand Farms in Whatcom County, Wash. The strike received widespread publicity, influencing the record penalty the farm later received for unrelated employment violations, according to Washington Department of Labor and Industries records.

Washington L&I cited 'publicity' in fining farm record amount

By DON JENKINS
Capital Press

Uproar over a worker's death figured in the Washington Department of Labor and Industries' decision to levy a record fine against a Whatcom County blueberry farm for unrelated violations of employment standards, according to department records obtained by the Capital Press.

An L&I investigation found Sarbanand Farms blameless in Honesto Silva Ibarra's death in August, but in a separate probe penalized the farm \$149,800 for late meals and missed rest breaks in July.

A department manager had approved fining the farm \$4,617, according to the records, but the penalty was revised upward by the assistant director of L&I's Fraud Prevention and Labor Standards, Elizabeth Smith.

In justifying the fine, a department memo cited the large number of workers affected and the regularity of missed breaks and late meals. "In addition, this is a high-profile case with much publicity," the memo stated.

L&I spokesman Tim Church agreed Friday that Ibarra's death and the subsequent firing of concerned workers who went on strike made the case high-profile. But he disagreed that publicity was a factor in calculating the fine for violations that occurred before Ibarra fell ill.

"I don't think we would say it played a factor. We would say it was part of the discussion of the larger event," Church said. "We knew we would have to justify what we were doing in a public way."

California brothers David and Kable Munger, who call their company the largest producer of fresh blueberries in North America, own Sarbanand, a farm in Sumas near the U.S.-Canada border.

L&I launched a high-profile safety investigation Aug. 9, three days after Ibarra, 28, died at a Seattle hospital. He had been taken by ambulance from the farm Aug. 2. Before Ibarra died, about 70 workers staged a one-day strike and were fired by Sarbanand.

Social justice activists accused farm managers of being indifferent to Ibarra's health and callously firing other Mexican nationals who were worried about Ibarra.

The King County medical examiner said Ibarra died of natural causes, and L&I ruled the death was not workplace

related. L&I also cleared Sarbanand of allegations that pesticides sickened workers.

The newly available documents, released in response to a records request by the Capital Press, pertain to an investigation into employment practices. L&I started the probe at the same time as the safety and pesticide investigations.

The agency concluded workers were served meals late or missed rest breaks 13 times on nine different days over two weeks in July. L&I had broad discretion in calculating Sarbanand's fine. The options presented in agency records ranged from as little as \$513 to more than \$2.95 million.

L&I investigators reported that farm managers "openly shared information" and "made immediate corrections to avoid future" violations. The farm also had no previous violations to count against it.

The agency's employment standards manager, David Johnson, created a note in October approving a \$513 fine for each of the nine days for a total penalty of \$4,617, according to agency records.

Records also indicate the department considered a \$61,500 penalty. In the end, the department settled on what it announced in a press release was the largest fine it had ever levied for those types of violations.

L&I arrived at the penalty by picking the day on which the most workers — 583 — were affected. The number was reduced in half and multiplied by \$513.

"We chose the middle path," Church said.

Efforts to obtain comment from Sarbanand were unsuccessful.

L&I's records on the employment standards investigation include copies of news accounts about Ibarra's death, the strike and a class-action lawsuit filed by Columbia Legal Services and a Seattle law firm. None of the stories focused on rest breaks or late meals.

The lawsuit, pending in U.S. District Court in Seattle, alleges workers were underfed, overworked and illegally fired.

L&I's files include numerous complaints from workers about the quality and quantity of food, and long lines that gave them little time to eat. Many workers also said they were disgusted by filthy restrooms.

L&I has filed the citation in Whatcom County District Court.

Fruit growers eye frost, pollination

By DAN WHEAT
Capital Press

WENATCHEE, Wash. — It's that time of year when tree fruit growers throughout the Northwest and in Michigan and New York are anxious to clear the rest of frost season without damage.

Washington — the overwhelming national leader in apple, pear and cherry production — will finish frost season about mid-May. Fruit trees are still dormant in New York and Michigan where April has been the coldest in recent record. Frost season will go the whole month of May.

Bloom was late last year in Washington. This year it's virtually right on the 90-year average of April 27 for full bloom of Red Delicious apple trees at the Washington State University Tree Fruit Research and Extension Center in Wenatchee.

Apricots have finished blooming. Cherries are done in the southern part of the state and just past full bloom from Wenatchee northward. Pears are in full bloom in Wenatchee, following cherries and ahead of apples.

"Just because we're at blossom doesn't mean we're out of frost season," said Harold Schell, director of field services at Chelan Fruit Cooperative in Chelan.

"Fruitlets can be just as susceptible as blossoms themselves. The weather looks favorable for the next 10 days, but it's been unsettled. The jury is still out," Shell said.

Jim Holcomb, agricultural meteorologist at Clearwest Inc., Wenatchee, said frost damage chances diminish with each passing day. Central Washington temperatures pushed into



Dan Wheat/Capital Press

Beehives in an East Wenatchee, Wash., pear orchard in full bloom April 23. Bees help pollinate blossoms, but frost could still damage crops.

the 70s and 80s this week, but Holcomb said forecasts beyond five days are too unreliable so he could not say the frost threat is gone.

There have been no real cold nights requiring wind machines or propane heaters throughout the region, only in colder pockets, he said.

"Yesterday morning (April 23) was the first time any number of fans ran in the Upper Wenatchee Valley, but bud development was not far enough along before that," Holcomb said. The morning low was 28 degrees.

The Upper Wenatchee Valley is predominately pears which, along with apples, aren't as susceptible to frost damage as cherries and stone fruit.

B.J. Thurlby, president of Northwest Cherry Growers in Yakima, said there hasn't been much freeze damage since a mid-February freeze resulting in about a 20 percent loss on

apricot blossoms and less than 5 percent on cherries. The bigger question is pollination, he said.

The southern part of the state, 10 days ahead of the north in bloom, battled wet, cold weather during bloom, hampering pollination. Bloom was spread out time wise also contributing to uneven pollination.

"Hopefully, we'll set a crop but it's a little early to tell," said David Douglas, president of Douglas Fruit Co., Pasco.

Charles Lyall, a Mattawa grower, said shuck fall (bloom to fruitlet separation) was just starting on his Chelan cherries

and doesn't look good.

"There's probably three to four sizes of fruit out there and if only the big stuff sets it won't be pretty," he said. "It will be a light crop on early varieties."

Five tons per acre is normal harvest on early varieties and depending on price, supply and demand, it's hard to make a profit under 2 tons per acre, he said.

New York and Michigan, second and third to Washington in apple production, experienced devastating spring freezes in 2012, wiping out about 50 percent of New York's apple crop and 95 percent of Michigan's. Washington had a large crop that year and made good money.

"We've had the coldest April on record so our trees are completely dormant. We had snow on the ground in the entire state until April 19," said Don Armock, president of Riveridge Produce, Sparta, Mich. "Our danger period of frost generally goes into the first three weeks of May. I would anticipate we will go beyond that."

There's been no freeze damage so far, but last year's crop was down 70 percent from freeze, Armock said.

Cynthia Haskins, president of New York Apple and Cherry Growers, Fishers, N.Y., said there have been no reports of frost or freeze damage in the state.

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Tires LES SCHWAB Weekly fieldwork report

Item/description	Ore.	Wash.	Idaho	Calif.
• Days suitable for fieldwork (As of April 24)	5.8	5.4	5.6	6.8
• Topsoil moisture, surplus	7%	11%	21%	10%
• Topsoil moisture, percent short	26%	8%	12%	35%
• Subsoil moisture, surplus	7%	7%	16%	10%
• Subsoil moisture, percent short	45%	7%	10%	35%
• Precipitation probability (6-10 day outlook as of April. 24)	40% below/ 33% above	40% below/ Normal	33-50% above	33% below/ 33% above

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