Foodmakers argue Washington's $18 million fine unconstitutional

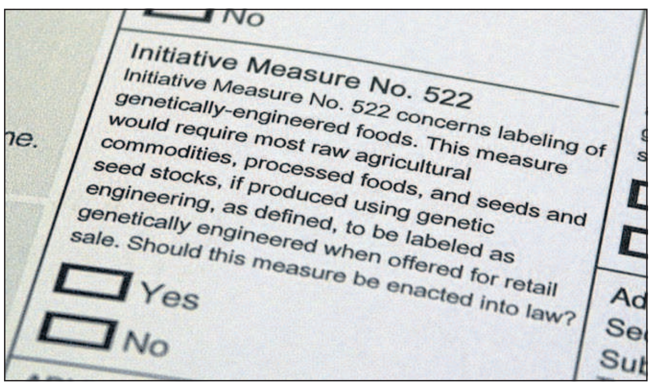
First and Eighth amendments at issue, organization says

By DON JENKINS
Capital Press

The packaged food and drink industry planned to try to persuade a Washington state appeals court this week that exercising its First Amendment rights required withholding the names of the companies that spent $11 million to defeat a 2013 initiative that would have required labels on food with genetically modified ingredients.

The Grocery Manufacturers Association argues that funneling the contributions through the trade association shielded companies from boycotts and even death threats, like the ones their members suffered for opposing a similar GMO proposition in California the year before.

"As applied to GMA, the (disclosure law in Washington) strikes at the First Amendment's most important protection: the right to advocate controversial political views," foodmakers argue in a brief to the Court of Appeals in Tacoma.



Capital Press File

The Washington Court of Appeals was to hear oral arguments May 24 on whether the Grocery Manufacturers Association broke the law by not reporting the names of companies that spent $11 million to defeat a 2013 GMO-labeling measure.

GMA is appealing a record-breaking $18 million fine handed down in 2016 by Thurston County Superior Court Judge Anne Hirsch. Hirsch ruled that GMA intentionally broke the law by belatedly naming the companies that contributed to the "No on Initiative 522" campaign.

The penalty is by far the largest ever levied in the U.S. for not reporting political activities. The next-biggest fine, $3.8 million, was levied by the Federal Elections Commission in 2008 against the Federal Home Loan Mortgage Corp.

Hirsch also awarded the attorney general's office more than $1 million, bringing the total judgment against GMA to more than $19 million.

GMA also argues the penalty is unconstitutionally excessive, violating the Eighth Amendment. GMA claims it believed it was complying with Washington law and that voters were not misled about the source of the money.

GMA, under fire from state regulators, named the companies shortly before the election. Leading contributors included companies such as PepsiCo, Nestle USA, Coca-Cola, General Mills and ConAgra Foods. I-522 was defeated with 51 percent of the vote.

Hirsch embraced the Washington attorney general's claim that sophisticated GMA executives schemed to distance brand-name companies from another bruising campaign over labeling products with ingredients derived from genetically modified organisms.

Duke University professor Michael Munger and University of Missouri professor Jeffrey Milyo, a senior fellow at the Cato Institute, filed a brief supporting GMA's First Amendment argument.

"Members of associations have a core right under the First Amendment to engage in political speech without disclosing their identity in a way that will subject them to potential threats, retaliation and boycotts," wrote the professors, both economists.

The state argues that GMA wasn't punished for speaking up, but for concealing who was funding it.

The three-judge appeals court, convening outside its normal venue, was to hear oral arguments in a 30-minute hearing May 24 at Rogers High School in Puyallup.

In a similar case, the anti-GMO organization Food Democracy Now has appealed a $319,281 fine for failing to name donors who contributed to the "yes" on I-522 campaign.

The appeals court will hear oral arguments in that case June 25 in Tacoma.

Ag could be big winner in U.S.-China trade thaw

Capital Press

The agriculture and energy sectors stand to benefit substantially as the U.S. and China walk back from a potential trade dispute, Idaho Farm Bureau officials say.

"We applaud both nations for choosing talks over tariffs," state Farm Bureau Federation President Bryan Searle, a farmer from Shelley, said in a release.

"That was certainly a relief to get some good news on China," said Genesee-based farmer Joe Anderson. "That was great news." Previously, he was very concerned about the possible impacts proposed tariffs could have on U.S. agriculture.

Michael Williamson, manager of Williamson Orchards and Vineyards in Caldwell, had been concerned about the impacts the tariffs could have on the U.S. fruit and wine industries.

"That was great news," he said. "Hopefully, now things can continue as normal."

The nations in March and April announced hundreds of billions of dollars in tariffs on each other, and China's proposed tariffs had largely targeted the U.S. agricultural sector. China earlier this year announced it would impose tariffs of 15 to 25 percent on a long list of U.S. farm products including wheat, corn, beef, fruit and wine — products Idaho produces in abundance, the Farm Bureau said.

But in a joint statement issued May 19 by the White House, the U.S. and China announced a framework that could reduce the $375 billion U.S. trade deficit with China.

The statement said, "the United States and China engaged in constructive consultations regarding trade in Washington, D.C.," on May 17-18. A consensus was reached to take "measures to substantially reduce the United States' trade deficit in goods with China. To meet the growing consumption needs of the Chinese people and the need for high-quality economic development, China will significantly increase purchases of United States goods and services."

Both nations "agreed on meaningful increases in United States agriculture and energy products. The United States will send a team to China to work out the details."

The Farm Bureau also referenced U.S. Treasury Secretary Steve Mnuchin's comments to Fox News May 20 saying the nations are stepping back from a possible trade dispute and that the U.S. expects to see a 35 to 45 percent increase in agricultural exports to China this year alone.

Brad Carlson/Capital Press

Laura Wilder at her Meridian sheep farm. She will be the Idaho Barley Commission's third administrator.

Idaho Barley Commission to get new administrator

By BRAD CARLSON
Capital Press

The Idaho Barley Commission will have a new administrator for the first time in 24 years.

Kelly Olson plans to retire as administrator Aug. 3. The new administrator, Laura Wilder, is slated to arrive June 11. They will work together until Olson retires.

Wilder will join the Idaho Barley Commission following a decade as executive director of the Idaho FFA Foundation. Before that, she worked eight years at the Idaho Beef Council as special projects coordinator and then executive director.

"It will be great to have that time with her to learn as much as I can from her, and to have her introduce me to industry representatives and growers," said Wilder, 57.

She said Olson developed strong programs that leave barley growers and the commission in a good position to keep Idaho's recently nation-leading barley industry on a growth path.

Commissioner Pat Purdy, a grower near Picabo, Idaho, will complete the second of two allowed three-year terms June 30. In recent years, commission achievements have included funding an endowment to create the state's first university-level research position dedicated to barley, and continuing to partner with university research, he said. The Idaho barley industry increased Asia exports and now sees more domestic use of barley as a food source as marketing in that segment continues.

"The commission is in a strong position, with a strong group of growers, a strong research team and support from industry," Purdy said.

Olson came to the Idaho Barley Commission as its second administrator in 1994 after seven years at the Idaho State Department of Agriculture, where she started the department's marketing program. She received a Governor's Award for Excellence in Agriculture early this year.

"We are on track to do great things. We are the largest barley producer in the U.S., and I don't see that changing in the foreseeable future," Olson said.

Idaho has three large malt-processing plants and a large contracting program to ship barley out-of-state for malt processing.

While malting and brewing remain strong, "we see a great opportunity to build demand for high-value food barley, and we are launching a new initiative with industry," Olson said. "I see great opportunities in our region to build demand and increase production of high-value food barley."

Purdy said Olson has been doing "an outstanding job helping to lead and grow the industry." As for Wilder, "I think she's going to take the reins right up and do a great job," he said.

Wilder, fifth-generation owner of her family's ranch northeast of Caldwell, lives on a 12-acre sheep farm in west Meridian with her husband, Steve, a high school agriculture teacher. They have two grown children.

As Idaho Barley Commission administrator, she plans to focus on communications and on continuing to grow the barley industry in Idaho.

"I will work on behalf of every barley grower in the state to utilize their check-off funds in the best way possible to enhance grower profitability and add value to the various barley sectors," Wilder said.

Idaho's 4,000-plus barley growers pay a 3-cent-per-bushel checkoff at the first point of sale. The checkoff is designed to enhance growers' profitability through research, market development and promotion, and information and education programs.

Judge refuses to block Idaho salvage logging

By MATEUSZ PERKOWSKI
Capital Press

Environmentalists have failed to persuade a federal judge to block the salvage logging of hazard trees burned during a 2016 wildfire in Idaho's Boise National Forest.

Over four months, the Pioneer Fire burned about 190,000 acres in the forest, including areas frequently visited by tourists. The federal government decided to harvest about 70 million board-feet of dead and hazard trees from less than 8 percent of the burned area.

Three environmental groups — Wildlands Defense, Alliance for the Wild Rockies and the Native Ecosystems Council — filed a lawsuit opposing the plan last year.

USFS

A judge has allowed salvage logging to continue following the 2016 Pioneer Fire in the Boise National Forest.

The complaint argued the U.S. Forest Service didn't properly consider the effects of salvage logging on the bull trout, a threatened fish species, in violation of several federal environmental laws.

Chief U.S. District Judge Lynn Winmill has now rejected the plaintiffs' motion for a preliminary injunction halting the two salvage logging projects, which affect the Payette River and Boise River watersheds.

Roughly half of the 14 timber sales involved in the projects have already been completed.

Timber harvest began in the two areas under an "emergency situation determination" by the Forest Service, which found that logging shouldn't be delayed because burned trees were a hazard to the public and deterioration would reduce their value by $1 million.

Because the wildfire affected steep slopes with soils prone to erosion, the agency established buffer zones around waterways where logging and road-building would be restricted.

"Sediment is deadly for bull trout. It increases water temperature, kills food sources and destroys habitat, among other things," the judge said. "These impacts are magnified because the creeks are already functioning at risk, meaning that they cannot absorb much sediment and still offer protective habitat for the bull trout."

The environmental plaintiffs objected to the Forest Service's erosion models, arguing that sediment would move farther than the agency expected.

However, Winmill has ruled the buffers of 120 feet to 240 feet were based on sound data and models, noting that the Forest Service took "extra steps" to ensure accuracy.

For example, the agency compared its models with actual erosion after a previous fire and determined that sediment moved roughly 30 to 70 percent less than projected, the judge said.

"Under these circumstances, the court cannot find that the plaintiffs have raised serious questions on their claims regarding threats to the bull trout from sediment movement," he said.

Oregon rancher, county intervene in grazing challenge

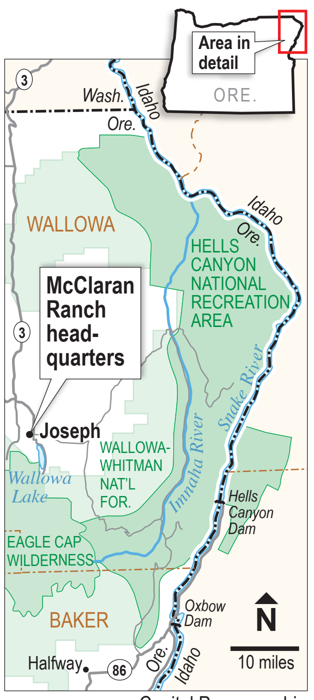
By MATEUSZ PERKOWSKI
Capital Press

A federal judge is allowing an Oregon rancher and county government to intervene as defendants in an environmentalist lawsuit against grazing in the Wallowa-Whitman National Forest.

The complaint was filed earlier this year by the Greater Hells Canyon Council environmental nonprofit, which claimed the U.S. Forest Service insufficiently studied the impacts of grazing on the Spalding's catchfly, a threatened plant.

U.S. Magistrate Judge Patricia Sullivan has ruled the Forest Service may not adequately represent the concerns of McClaran Ranch, which grazes cattle in the forest, or Wallowa County, which relies on agriculture for its tax base and economy.

The ranch and the county have distinct interests that may be impaired by the lawsuit and thus are entitled to intervene in the litigation, Sullivan said.



Capital Press graphic

According to the complaint, livestock trample the Spalding's catchfly and consume its flowers and seeds, thereby hindering reproduction of the perennial plant, which has been protected under the Endangered Species Act since 2001.

Cattle also introduce and spread invasive weed species that compete with the Spalding's catchfly, whose populations are particularly at risk of displacement due to their tendency to "clump," the plaintiff argues.

The environmental group alleges the Forest Service violated the National Environmental Policy Act by failing to study eliminating grazing from areas where the Spalding's catchfly is vulnerable to grazing, among other claims.

The Forest Service has filed an answer to the lawsuit denying violations of NEPA and other federal statutes and arguing the complaint should be dismissed partly because the nonprofit failed to raise its objections during administrative proceedings.

In his request to intervene, rancher Scott McClaran said his family has raised livestock in the region for nearly 100 years and has developed strategies with the Forest Service to minimize negative effects on the Spalding's catchfly and other native resources.

The ranch depends on grazing within the four allotments of the 44,000-acre "Lower Imnaha Rangeland Analysis" project area that's at the center of the lawsuit.

"A decision that limits, restricts or prohibits livestock grazing on some or all of these allotments would hinder the environmental benefits from the rotational grazing among pastures on the ranch and allotments," he said. "It would also negatively impact the economic viability of McClaran Ranch and threaten the ability of the McClaran family to maintain the ranching lifestyle that has been central to my family for generations."

The lawsuit could set a legal precedent affecting grazing in other areas where the Spalding's catchfly grows, which could seriously impair Wallowa County's economy, according to a declaration from Todd Nash, a rancher and county commissioner.

"Such an economic impact would affect the county's ability to maintain the quality of the services the county must provide to ensure the health, safety, and welfare of its residents," he said.