Federal judge revokes Hammonds' grazing permit

By MATEUSZ PERKOWSKI
Capital Press

A federal judge has effectively revoked a grazing permit for Oregon's Hammond Ranches, ruling that it was renewed contrary to regulations and thus unlawful.

U.S. District Judge Michael Simon has determined that former Interior Secretary Ryan Zinke didn't properly justify his decision earlier this year to renew the grazing permit for ranchers Dwight and Steven Hammond, a father and son who'd been convicted of arson and then received a presidential pardon.

The U.S. Bureau of Land Management had previously decided against renewing the grazing permit for Hammond Ranches in 2014, after a jury had found the Hammonds guilty of setting fires to public rangeland.

Contrary to federal regulations, Zinke didn't conduct the analysis necessary to find that their company, Hammond Ranches, had a "satisfactory record of performance" by reviewing the "nature and seriousness" of incidents in which they'd failed to comply with grazing rules, the judge said.

"It was arbitrary and capricious, an abuse of discretion, not rationally connected to the facts before the agency, inconsistent with the governing statutes and regulations, and an unexplained change in agency practice and procedure," Simon said.

Capital Press was unable to reach the Hammonds for comment as of press time.

Although the Hammonds were pardoned by President Donald Trump in 2018 and released from prison before completing their mandatory five-year prison sentences, that doesn't provide a sufficient basis for renewing their grazing permit, the judge said.

The pardons could have been issued for multiple reasons and don't necessarily mean the president discounted the seriousness of their crimes in the context of grazing regulations, Simon said.

"The President may have believed that the shorter sentences originally imposed of three months for Dwight Hammond and one year and one day for Steven Hammond were more equitable," the judge said. "Such a belief would not show that the underlying crimes were not serious or did not support permit nonrenewal, but merely that they did not support five years of confinement in a federal prison."

Due to these "serious errors," Simon said it was more appropriate to overturn the renewal of Hammond Ranches' grazing permit rather than allow it to remain in place while the agency reconsiders the decision under the proper regulatory framework.

That's particularly true since BLM may eventually have a "satisfactory record of performance," once the agency properly follows regulatory procedures, the judge said. "Thus, it is far from certain that a renewal permit will be issued after remand."

The consequences of vacating the grazing permit renewal would not have severe consequences for BLM, aside from "the loss of a few thousand dollars in grazing revenue," Simon said.

Nor would the impact be "economically disastrous" for Hammond Ranches, which was "able to maintain its ranching operation and obtain private grazing for the previous five years when it had no federal grazing permit and, presumably, during this past year when it was allowed only reduced grazing."

The judge issued his ruling on Dec. 20, a day after hearing oral arguments between attorneys for the BLM and several environmental groups that sued the federal government over the grazing permit's renewal.

The BLM had argued against a motion by the environmental plaintiffs to revoke the Hammonds' grazing permit, claiming that Zinke properly considered the pardons in deciding to renew the ranchers' grazing authorization.

"The secretary did have the authority to make the decision he did," said Luther Hajek, an attorney representing the government.

The grazing decision was consistent with BLM's grazing regulations and did not violate the Federal Land Policy and Management Act, nor did the lack of a full environmental analysis run afoul of the National Environmental Policy Act, according to the government.

The BLM appropriately used a "categorical exclusion" to exempt the grazing permit renewals from such an assessment, since it was within Zinke's discretion to find an environmental analysis to be unnecessary based on the decision's environmental significance, the agency said.

The environmental plaintiffs — Western Watersheds Project, Center for Biological Diversity and Wildearth Guardians — argued the grazing permit renewal was unlawful because the Hammonds don't meet the requirement for a "satisfactory record of performance."

"Livestock grazing on public lands is a privilege, not a right," said David Becker, attorney for the environmental groups. "Like any privilege, it's subject to revocation if it's abused."

Kathryn Grandy/PVM

West Mathison, president of Stemilt Growers, Wenatchee, Wash., with his son, Jax, 13, and daughter, Maxine, 9, delivering Cosmic Crisp apples to Seattle's University Village QFC store on Dec. 1.

Cosmic Crisp off to good start

By DAN WHEAT
Capital Press

WENATCHEE, Wash. — At one minute after midnight on Sunday morning, Dec. 1, a semi-truck with a load of Cosmic Crisp apples left a loading dock at Stemilt Growers in Wenatchee.

Three hours and 150 miles later it arrived at Seattle's University Village QFC grocery store.

At 7 a.m., West Mathison, president of Stemilt Growers, and his family carried the first box of Cosmic Crisp into the store, where customers, some from Canada, waited to buy them.

A local television news crew was on hand.

Cosmic Crisp, developed over 20 years by Washington State University's apple breeding program in Wenatchee, is a cross between Honeycrisp and Enterprise. It is the industry's great new hope to replace Red Delicious, Gala and Honeycrisp as the state's flagship apple and a top money maker.

"People were waiting in line. One guy bought an entire box and then came back and bought another one," Mathison said. "The entire display, about 50 (40-pound) boxes was sold out by 4:30 p.m. It was supposed to last a couple of days."

It was one of several ceremonial launches.

Apples were harvested in September and October but companies agreed to hold off sales until Dec. 1 to give the fruit time to properly ripen for the best flavor.

Only about 460,000 boxes are available in this first year of commercial sales. That's out of a total state crop of 138.2 million boxes.

Consumer response is good on flavor and crispness and retail demand exceeds supply with all shippers getting plenty of calls, said Brian Focht, manager of the Washington Apple Growers Marketing Association in Wenatchee.

"We're selling it around $1.65 per pound FOB. That's the average. About $65 per box. I feel great about it. The launch couldn't have gone any better. PVM did an excellent job of getting out in front of it with promotional materials and advertising," Focht said.

Retailers are doing a good job at keeping the price to consumers moderate at $2.49 to $3.49 per pound, mostly at $2.99, he said.

Comparatively, Honeycrisp is wholesaling at an average of $35 per box, Gala at $22 and Red Delicious at $15.

Several ancillary products are being launched including Cosmic Crisp apple slices, juice, cider, chocolate and deep dish pie.

Proprietary Variety Management is a Yakima company on contract with WSU to manage commercialization.

From tree and fruit royalties, WSU and PVM are spending $10 million — averaging $2.5 million per year from 2019 through 2022 — to promote the apple, mostly through social media.

From Jan. 1 through Dec. 9 Cosmic Crisp received $47.6 million worth of free media, including a story on NBC Nightly News, Kathryn Grandy, PVM director of marketing and operations, told growers at the Washington State Tree Fruit Association annual meeting on Dec. 11.

The only negative reactions Grandy's heard are some people saying they wanted a sweeter apple, more like Honeycrisp, and some complaints about a $6 per pound price for organic Cosmic Crisp.

Apples from three-year-old trees made up 60% of the crop release on Dec. 1. The remaining 40% from two-year-old trees will be released Jan. 1, Focht said.

A total of 82,000 boxes of Cosmic Crisp were sold in the first week and inventory likely will be sold and all shipped to retailers nationwide by the end of January and finished selling in stores in February, he said.

"We will see as we ramp up in volume in coming years if we can sustain this kind of momentum," Focht said. "Right now it feels pretty good."

Sarbanand agrees to pay $3.75 million to settle suit

By DON JENKINS
Capital Press

California-based Munger Bros. has agreed to pay $3.75 million to settle claims it mistreated and illegally fired Mexican nationals in 2017 at its blueberry farm in northwest Washington.

Some $2.96 million would be distributed to as many as 519 workers who harvested berries at the company's Sarbanand Farms in Sumas, Wash., according to a proposed settlement filed Monday in the U.S. District Court for Western Washington.

Another $785,500 would go to the workers' attorneys and for legal costs. Judge John Coughenour still must approve the agreement.

"Our clients are very happy with the proposed settlement. We are glad the parties worked together to reach an amicable resolution. We await Judge Coughenour's review and, hopefully, his initial approval," Columbia Legal Services attorney Joe Morrison said in an email Monday.

Munger admits no wrongdoing, but the alternative to an out-of-court settlement was risking a trial set for April. Columbia Legal Services and the Seattle law firm representing workers expected to seek damages of between $2 million and $6 million, according to court records.

Efforts to reach Munger to comment were unsuccessful. Munger recently reached a $3.5 million settlement with the U.S. Labor Department over its treatment of 3,200 workers at Sarbanand and its farm and packing plant in Delano, Calif. The company agreed to pay $2.5 million in back wages and a $1 million fine.

The Sumas farm, near the Canadian border, was the site of protests in 2017 after 65 workers in the U.S. on H-2A visas were fired. The workers had staged a one-day strike after a co-worker, Honesto Silva Ibarra, was taken away by ambulance.

Ibarra later died at a Seattle hospital of what officials said were natural causes. A state investigation concluded the death was not work related.

The lawsuit filed in Washington federal court alleged the 65 workers were illegally terminated and sent home, while all of the Mexican nationals brought to Sarbanand were subjected to a hostile work environment.

The fired workers will equally share $675,000, or at least $10,384 each. Unclaimed shares will be distributed to workers who filed claims.

The 519 workers, which includes the fired employees, will equally share $2.67 million, or at least $4,368 each.

The two lead plaintiffs, Barbaro Rosas and Gudalupe Tapia, will receive an additional $10,000 each, according to the settlement. The two workers helped attorneys with the case, according to court records.

The payout to attorneys equals 21% of the settlement. According to a court filing, the three attorneys who did the bulk of the work have hourly rates of between $300 and $515 and racked up fees in excess of what they settled for.

The attorneys must still contact workers to tell them about the settlement. According to a court filing by Columbia Legal Services, attorneys are trying to reach workers individually.

Attorneys are concerned that informing workers through radio and newspaper ads will make them vulnerable to criminals, according to court filings.

Columbia Legal Services said it had valid numbers for 62% of the workers, but was confident of reaching the other 38% through friends and families.

LEGAL

PURSUANT TO ORS CHAPTER 87

Notice is hereby given that the following vehicle will be sold, for cash to the highest bidder, on 1/20/2020. The sale will be held at 10:00am by

ARMERS INS CO OF OREON
2885 NATIONAL WAY, WOODBURN, OR
2017 KIA SOUL 4DR
VIN = KNDJP3A59H7473281
Amount due on lien $275.00
Reputed owner(s)
RIDIANA D & ANTONIO B DONINGUEZ
KIA MOTORS FINANCE CO

S162179-1

LEGAL

The Soil and Water Conservation Commission (SWCC) will hold a tour from 1-5 p.m., on Tuesday, January 14, 2020, and its regular quarterly meeting from 8:30 a.m. to 1:30 p.m. on Wednesday, January 15, 2020. The regular quarterly meeting will be held at the Clackamas SWCD office, 22055 S Beavercreek Road, Beavercreek, OR 97004. The meeting agenda covers SWCC reports, advisor reports, Soil and Water Conservation District programs and funding, Agriculture Water Quality Management Program updates, and other agenda items.

The Oregon Department of Agriculture complies with the Americans with Disabilities Act (ADA). If you need special accommodations to participate in this meeting, please contact Sandi Hiatt at (503) 986-4704, at least 72 hours prior to the meeting.

S161100-1

LEGAL

PURSUANT TO ORS CHAPTER 87

Notice is hereby given that the following vehicle will be sold, for cash to the highest bidder, on 1/20/2020. The sale will be held at 10:00am by

HARTFORD INSURANCE
2885 NATIONAL WAY, WOODBURN, OR
2016 TOYOTA SCION 4DR
VIN = 3MYDLBZV0GY125911
Amount due on lien $275.00
Reputed owner(s)
AMANDA MAGLALANG & MARIL A B TUNE. TOYOTA LEASE TRUST-LESSOR.

S162175-1