NORPAC sues farmers who demand crop payments

By MATEUSZ PERKOWSKI
Capital Press

Capital Press File
Workers at NORPAC Foods prepare onions for processing. The cooperative, now known as North Pacific Canners & Packers, has filed a lawsuit against farmers who demand crop payments.

The former NORPAC cooperative is suing several of its own growers because they're demanding to be paid for crops, thus delaying the processor's liquidation plan.

The company has filed a complaint asking a bankruptcy judge to declare that 10 member farms aren't entitled to any payment for crops delivered in 2019 from the $40 million that it plans to disburse to other creditors.

Since last year, the 10 defendants have filed bankruptcy claims against NORPAC — which is now called North Pacific Canners & Packers — alleging the processor owes them collectively nearly $13 million.

That amount includes earnings that were retained by NORPAC instead of being paid out to farmers, who instead increased their ownership in the cooperative.

In bankruptcy proceedings, owners are the last in line for repayment and often don't receive any money for their equity when a liquidated company's debts exceed its assets.

However, the defendants in this case claim to be owed $2.3 million for last year's corn, bean, cauliflower and broccoli crops, which are secured with agricultural liens that typically have top priority for repayment in bankruptcy.

In its lawsuit, the cooperative argues these claims should be "set to $0" because member farms are subordinate to all other debt holders under NORPAC's articles of incorporation.

The defendants are effectively seeking repayment of "unpaid crop proceeds," but due to the company's net losses, their earnings are "less than zero" and thus their claims are worth nothing, according to the cooperative.

Member farms cannot file agricultural liens against their own cooperative under Oregon law and under the terms of their contracts with NORPAC, the complaint said.

Agricultural liens are only valid when crops are sold to a "purchaser" under Oregon law, which doesn't include the cooperative to which a farmer belongs, the complaint said.

The liens filed by the farms have violated their contracts with NORPAC, causing "uncertainty and confusion" regarding the cooperative's liquidation plan and forcing it to spend additional money to resolve the dispute, the complaint said.

If the cooperative prevails in the lawsuit, the defendants will also be liable for the company's litigation costs under the terms of their contracts, the complaint said.

The complaint against these first 10 defendants should be considered a "test case" that will provide legal guidance for claims filed by other member farms against NORPAC, according to the cooperative.

Mark Comstock, an attorney for several of the defendants, said the farms do not believe the legal issues to be as "cut and dry" as alleged by the processor's attorneys.

"We're looking to see how we can maximize any recovery for growers who supplied NORPAC," he said.

A key legal point that must be decided is whether the Oregon law that prohibits its growers from filing agricultural liens against their own cooperative still applied to NORPAC after it filed for bankruptcy in August 2019, Comstock said.

At that point, the processor became a debtor-in-possession and was no longer covered by that statute, he said. "It's no longer a cooperative, technically, and that's what we want a bankruptcy judge to decide."

Payments owed for crops delivered to the processor within 20 days immediately before its bankruptcy filing are also entitled to be treated as administrative claims, which receive a higher priority for repayment than general unsecured claims, Comstock said.

Aside from the lawsuit against these growers, the cooperative has also recently submitted its liquidation plan to the bankruptcy court under which the farmer-owners will receive no distribution of remaining funds.

After selling substantially all of NORPAC's assets, including four processing facilities in Oregon and Washington, the cooperative has paid off CoBank — its biggest lender — with about $115 million of the proceeds.

The company has also substantially paid off all other creditors who had claims secured with collateral, including non-member farmers who were protected by the Perishable Agricultural Commodities Act, the plan said.

That's left the cooperative with roughly $40 million, consisting mostly of cash and accounts receivable for sold goods, which will be distributed among unsecured creditors, according to the plan.

NORPAC's largest unsecured creditors include companies that provide packaging and cold storage services, as well as other food processors.

Under the liquidation plan, these and other "convenience class" unsecured creditors with claims over $10,000 will receive 50 percent of the money they're owed, while the remaining funds will be split up proportionally among general unsecured creditors.

These general unsecured creditors can expect to recover 30 percent to 45 percent of their claims under the current version of the liquidation plan.

However, member farms are seeking $16 million to $18 million in payment for crops, while NORPAC is also accused of inflating the price of bulk goods it sold to the National Frozen Foods Corp. by $7 million.

If the cooperative loses these lawsuits, general unsecured creditors may only recover 10 percent to 20 percent of the money they're owed, according to the plan.

Washington wolves increase, but retreat on recovery goal

By DON JENKINS
Capital Press

WDFW
A member of the Teanaway wolfpack in Central Washington. The population of wolves in the state increased by 15% last year, the department said.

Washington's wolf population grew by 15% in 2019, even as statewide recovery goals lost ground, according to a report released Monday by the state Department of Fish and Wildlife.

About four-fifths of the state's 145 wolves were in Ferry, Okanogan, Stevens and Pend Oreille counties in northeast Washington.

Stevens County Cattlemen's Association President Scott Nielsen said he wasn't surprised wolves are concentrated in northeast Washington.

"If I were a wolf, I'd be comfortable in Stevens County. You have an endless supply of Red Hereford cattle," he said.

Washington wildlife managers conceived wolf recovery over a decade ago as a statewide project, expecting wolves to reproduce in Eastern Washington, the North Cascades, and South Cascades in roughly equal numbers as early as 2021.

Wolves have yet to colonize the South Cascades, and the number of breeding pairs in the North Cascades declined last year.

Meanwhile, wolves have met or exceeded recovery goals in Eastern Washington since 2014.

Fish and Wildlife statewide wolf specialist Ben Maletzke said a wider distribution of wolves will happen. "I think wolves are making their way," he said. "I don't think it's that far off."

Fish and Wildlife's count represents the minimum number of wolves at the end of 2019. The department counted 126 at the end of 2018. The wolf population has increased 11 straight years, averaging 23% growth per year.

Fish and Wildlife cautioned the new count may be skewed. The Colville tribe has declared wolves recovered on its reservation in northeast Washington and discontinued winter counts. Based on sightings, the tribe estimated there were 37 wolves on its reservation, adding to the 108 counted by Fish and Wildlife.

The state wolf plan measures recovery by breeding pairs, not total population. The plan calls for at least four breeding pairs in the three regions. Eastern Washington had eight breeding pairs last year, including two in southeast Washington. The number of breeding pairs in the North Cascades dropped to two from three.

Six wolves wearing radio collars left their packs in 2019, but no wolf went in a direction that would have advanced recovery goals. The six went to Idaho, Oregon, Montana, British Columbia or another pack in northeast Washington.

Maletzke said wolves have a tendency to go toward other wolves, rather than cross unoccupied territory. "It's a little scary to walk through a ghost town," he said.

Wolves have largely run out of room to form new packs in northeast Washington, Maletzke said. The region's population may ebb and flow as packs grower larger or smaller, he said.

Nielsen said Fish and Wildlife has not done enough to discourage wolves from attacking livestock in northeast Washington. "If they were, they would disperse," he said.

Oregon wolf population increased 15%

State now home to at least 158 wolves

By GEORGE PLAVEN
Capital Press

SALEM — Oregon's wolf population continued to rise in 2019 while the number of confirmed attacks on livestock fell by nearly half, according to state wildlife officials.

Ranchers in rural Oregon, however, say the number of "confirmed" wolf attacks is nowhere near the actual number, and many producers have simply given up reporting cases of dead or missing livestock after growing frustrated with how the predators are being managed.

The Oregon Department of Fish and Wildlife released its annual wolf report April 15, documenting at least 158 wolves statewide. That is a 15% increase over 2018, when biologists counted 137 wolves.

Oregon now has 22 established wolfpacks, up from 16 the previous year. A pack is defined as four or more wolves traveling together during winter.

ODFW also identified nine other distinct groups of 2-3 wolves that do not meet the strict definition of a pack.

Most wolves are densely clustered in northeast Oregon, with a few packs spreading into the northern and southern Cascades. ODFW says the total wolf population is likely higher, and the annual survey is only a minimum count based on verified evidence such as visual sightings, tracks and photos taken by remote trail cameras.

The number of wolves in Oregon has steadily risen since counting began in 2009, when fewer than 20 animals were identified. Gray wolves are still listed as a federally endangered species in Western Oregon, though they were removed from the state endangered species list east of highways 395, 78 and 95 in 2015.

Roblyn Brown, ODFW wolf coordinator, said wolves are expanding their range with three new packs in the Blue Mountains of Eastern Oregon, south of Interstate 84. In Western Oregon, the Indigo pack was also officially confirmed in eastern Lane and Douglas counties.

No wolves were poached in 2019, though five were struck and killed by vehicles and another died from disease. A rancher in Baker County also legally shot a wolf he caught in the act of chasing a herding dog on his ranch near Halfway in March.

Meanwhile, the number of confirmed wolf attacks on livestock fell 43% in 2019. ODFW staff investigated 50 possible cases of wolf-livestock depredation, with 16 incidents confirmed, one "probable," 12 possible or unknown and 21 non-wolf related. Overall, ranchers lost one adult cow, one steer, 11 calves, six sheep and one guard dog to wolves.

Brown said she is impressed with ranchers' ingenuity as they implement new non-lethal tools to protect their livestock without harming wolves.

"The wolf population continues to expand into areas where livestock producers have less experience with wolves," Brown said. "We appreciate all livestock producers for their efforts to co-exist with wolves."