



Lori Maricle/WGC

**Aki Watanabe, left, from Miller Milling Co. in Minneapolis, Minn., and Nobukazu Mae from Rogers Foods in Vancouver, Canada, in front of the Washington State University "welcome" hillside on their way to visit the USDA Agricultural Research Service's Western Wheat Quality Lab in Pullman, Wash.**

## First in-person wheat trade team tours PNW's 'unusual' crop

By **MATTHEW WEAVER**  
Capital Press

The first in-person trade team representing overseas wheat customers since the start of the COVID-19 pandemic toured the Pacific Northwest last week.

Two North American representatives of the Nishin Seifun Group from Japan visited Idaho, Oregon and Washington. They are based in Minneapolis, Minn., and Vancouver, B.C., in Canada.

"Due to COVID restrictions, it's still really difficult for people to get to the United States from Japan and vice versa," said Joe Bippert, program director of the Washington Grain Commission. "If you have people that are already vaccinated living in a country with easier access to the United States, it just made more sense."

The U.S. wheat industry has been relying on "virtual" trade teams using online platforms since March 2020.

The group represents one of the four major flour mills in Japan. Japan is the third largest customer for U.S. wheat, annually buying an average of 2.83 million metric tons in the last five years, according to U.S. Wheat Associates, the overseas marketing arm of the industry.

The group usually visits once a year, but the trip was canceled in 2020 due to the pandemic.

"This year, it wasn't originally planned, but given the unusual crop, they wanted to make a point to send a team over," Bippert said.

Japan desires a consistent product throughout the year, and typically requires a maximum protein content of 10.5%. Drought and heat stress this year have resulted in higher protein levels in some Pacific Northwest wheat.

The U.S. industry recommends Japan change its specifications to allow grain elevators and exporters to blend proteins.

"It's going to be challenging as the year progresses to be able to meet that (10.5%) specification," Bippert said. "As opposed to supplying them what they need early on and then not having enough later, we're hoping they'll change their specification ... and allow them some time to communicate to their customers what the change is going to be so the end-users can make whatever adjustments that are needed to make sure the quality stays consistent."

Other large markets for Northwest wheat, such as the Philippines and South Korea, are making adjustments to their specifications to account for the higher protein, Bippert said.

The group sent questionnaires about the crop to each grain elevator, and requested samples, which they will blend together into a sample representative of PNW wheat, milling and testing for performance, Bippert said.

They will take answers about the harvest and crop quality back to the Ministry of Agriculture, Forestry and Fisheries, the wheat purchasing agent for Japan, and make recommendations about what to change in purchase specifications.

During the visits, the team considered each grain elevator's COVID-19 protocols. Some required masking inside, while one wanted a meeting outdoors, Bippert said.

"There were some adjustments," he said. "Nothing that took away from the quality of the meeting."

The grain commission is beginning to hear from more teams hoping to visit the region, he said.

As new information regarding the Delta variant of COVID-19 becomes available, travel requirements for the U.S. and customers overseas will likely change, he said.

"If companies are able to adjust and meet those requirements, I think the preference will be for an in-person visit," he said.

# 149-year-old Washington farm fights over water for survival

By **DON JENKINS**  
Capital Press

VANCOUVER, Wash. — The Zimmerman family farm has survived 149 years, but may soon close if it can't get the water right it applied for in 2009 from the Washington Department of Ecology.

The odds look long for Bill Zimmerman, whose forefathers bought the property in 1872. He pumps from a well to irrigate about 100 acres, and Ecology says that is illegal. The department's stance comes down to this: Zimmerman must prove the water he uses won't lower a nearby creek by one drop.

If he does, he'll have to somehow put that drop back in the creek. A drop for a drop. To keep farming, Zimmerman has to navigate this zero-sum game.

"It's been anything but simple," he said. "It's really been complex."

For generations, Western Washington farmers supplemented ample rainfall with short irrigation seasons. Water rights were not as well developed as in arid Eastern Washington. At the same time, Washington water law encouraged family farms.

Times changed, however, and the Legislature made fish a priority.

State Supreme Court decisions further favored keeping water in streams. And the idea that wells and streams are connected — it's called "hydraulic continuity" — took hold, erasing the distinction between groundwater rights and surface water rights.

Zimmerman, 67, said he realized more than a decade ago he needed to secure a water right. The farm had converted to water-intensive fruits and vegetables after the market for clover seed shriveled.

"We realized, 'Gosh, people really wanted fresh produce, and we could supply that,'" Zimmerman said.

The farm built a roadside store and capitalized on Clark County's growing population. City residents flock to Bi-Zi Farms to buy fresh produce and to pet farm animals.

To grow berries, corn, cucumbers and other crops, Zimmerman applied 12 years ago to pump 300 gallons a minute, up to 120 acre-feet a year, to irrigate 94 acres.

While waiting for a permit, he irrigated and occasionally checked with Ecology. "I was always told, 'You're almost to the top of the pile. Anyway, you'll be fine,'" he said.

Last November, Ecology mailed letters to water-right applicants in the basin, including Zimmerman. The letter said to submit a "mitigation plan" or forget about getting a water right.

Zimmerman checked the only box that wouldn't have killed his produce farm.

The letter told him he must "hire a



Don Jenkins/Capital Press

**Clark County, Wash., farmer Bill Zimmerman says his farm could go under if it can't get a water right for his family's 149-year-old operation.**

qualified consultant to evaluate the project." Submitting a mitigation plan "in no way guarantees approval of a water right."

Ecology's authority stems from an "in-stream flow rule" in the Washington Administrative Code. The rule prohibits any new water right that "adversely impacts in-stream resources."

Some waterways have in-stream flow rules and some don't. Salmon Creek has one, making it a "closed stream basin."

Any new water right — whether from groundwater or surface water — must offset "100%" of its impact to the creek and its tributaries. This typically means relinquishing a water right to get a new one.

Ecology tried another way once. It proposed offsetting a city's new water right by improving fish habitat. The plan took 20 years to write and had broad support.

The state Supreme Court nixed it. The 6-3 decision in 2015 said Ecology couldn't claim it was in the public's interest to permanently take water from a stream, even if there was a net benefit to fish.

The decision prevents anything other than a "water-for-water" mitigation plan.

Following through on his response to Ecology, Zimmerman hired a consultant. He said he's spent about \$5,000, but has no plan.

Zimmerman could connect to a public waterline that runs past the farm. He estimates his water bill would be a cost-prohibitive \$100,000 a year, a figure the water utility doesn't dispute.

Another option would be to buy existing water rights. Zimmerman estimates that would cost between \$1,000 and \$3,000 an acre-foot. The one-time expense would be doable, he said, but he has to find available water rights in the same sub-basin, and so far he hasn't.

Recently, Zimmerman went public with his plight, framing the issue on social media as Ecology denying water to

grow food.

An online petition has collected thousands of signatures. Comments sympathetic to Zimmerman and hostile to Ecology pour in on Facebook.

Zimmerman calls the response "heart-warming." He also said he knows Ecology is "ticked off."

Ecology spokesman Jeff Zenk said the public-relations push has not helped, nor changed Ecology's position.

"We have an obligation to identify how much impact he's going to have on the in-stream flow," Zenk said.

"We aren't trying to overstep our authority. We have to go by what the courts, the Legislature and the (administrative code) tell us," he said.

Furthermore, Ecology does not have anti-agricultural bent, Zenk said.

"Nobody wants to see Mr. Zimmerman's farm close. The public doesn't. Ecology doesn't. Nobody does," Zenk said. "The rules are being applied to Mr. Zimmerman the same as to anybody in that situation."

By continuing to irrigate, Zimmerman risks fines — \$5,000 a day for all summer.

Zenk said he can't speculate on whether Ecology will take enforcement action, but adds, "it's obviously against the law."

Zimmerman said he's continued to irrigate "to finish out the crops we have and produce food for the community."

One only has to look at surrounding houses to believe builders covet the farmland. But Zimmerman said he has no thoughts of selling.

One son, Doug, works on the farm. The other, Joe, manages a county-owned educational farm in Vancouver.

"My family wants to continue," Bill Zimmerman said. "If we don't get the water right, it puts us in a box. As to what we would do, I don't know."

He said he has no regrets about stirring up the public, even as he goes back and forth with Ecology.

## 9th Circuit rules against landowners in Clean Water Act dispute

By **MATEUSZ PERKOWSKI**  
Capital Press

A federal appeals court has ruled against Idaho landowners who disputed that their property contains wetlands that can't be filled without a Clean Water Act permit.

The lawsuit came to national attention nearly a decade ago, when the U.S. Supreme Court allowed Chantell and Michael Sackett to challenge a federal order that accused them of unlawfully altering wetlands to build a house near Priest Lake.

Though the Sacketts won

that case, the 9th U.S. Circuit Court of Appeals has now agreed with the U.S. Environmental Protection Agency's underlying decision that their property contains wetlands under Clean Water Act jurisdiction.

"In sum, EPA reasonably determined that the Sacketts' property contains wetlands that share a significant nexus with Priest Lake, such that the lot was regulable under the CWA and the relevant regulations," the 9th Circuit said.

The couple believes the 9th Circuit's opinion is in error and is reviewing the ruling with its lawyers to

decide how best to free the property from federal CWA authority, said Tony Francois, senior attorney with the Pacific Legal Foundation, a nonprofit law firm that represented the Sacketts.

The 9th Circuit's reasoning could endanger other landowners in the West, including farmers, whose property comes under the ruling's broad definition of a federally regulated wetland, Francois said. "It's certainly not unique to the Sacketts."

Under the ruling's rationale, the EPA can "reach across fairly significant distances of dry ground" to claim that "any swampy soil

on your property" is adjacent to a federal waterway and thus subject to CWA regulations, he said.

"The EPA's own investigation found there is no surface flow between the Sackett's lot and the lake," Francois said. "They're completely isolated from the lake."

The Clean Water Act is controversial in agriculture because farmers fear that if their property is subject to the statute's authority, they can be forced to limit the uses of their land unless they obtain an expensive and time-consuming permit.

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