Judge stays couple's discrimination lawsuit against USDA

By MATEUSZ PERKOWSKI
Capital Press

A federal judge has stayed a lawsuit brought by an Oregon couple who've challenged a USDA loan forgiveness program for allegedly discriminating against white farmers.

U.S. Magistrate Judge Patricia Sullivan has put the litigation on hold to "avoid unnecessary, duplicative government action" because the plaintiffs, Kathryn and James Dunlap, are already represented in a class action lawsuit against the $4 billion debt relief program.

The judge said the "interests of judicial efficiency weigh in favor of a stay" because it would "not unduly prejudice plaintiffs, nor would it present tactical disadvantages to plaintiffs."


James and Kathryn Dunlap

The Dunlaps, who farm near Baker City, Ore., are among several growers across the U.S. who have claimed white farmers were unlawfully excluded from the loan assistance program, which was passed by Congress as part of COVID-19 relief legislation earlier this year.

Under the program, farmers who are Black, Native American, Asian, Hawaiian or Pacific Islander are eligible for payments of up to 120% of their USDA loans, which critics argue violates equal protection under the law.

"Farmers and ranchers who are white are ineligible for loan assistance, regardless of their individual circumstances," according to the complaint filed by the Dunlaps, who have otherwise qualifying USDA loans for cattle and farm equipment.

The USDA argued their lawsuit and similar ones must be stayed because a class action case has been certified in Texas that already represents their interests while also enjoining the debt relief program.

The Dunlaps objected to the stay, arguing the class action may not adequately represent their interests, but the judge said she would follow the example of federal courts in several other states that have put similar cases on hold. The Texas class action lawsuit "involves the same defendants, general claims, and request for relief as in the present case," she said.

However, the judge said the Dunlaps can ask to lift the stay if they opt out of the class action lawsuit, which they and other farmers are trying to do. The couple are among a group of 12 farmers who've filed a motion to opt out of the Texas case because they "should be allowed to pursue their chosen claims, with their chosen counsel, in their chosen forums."

These farmers argue the class action complaint more broadly attacks USDA programs for alleged racial discrimination while they are specifically targeting the loan forgiveness program. The class action lawsuit also includes different legal theories, they claim.

The USDA opposes their motion, arguing the Texas lawsuit is the type of class action litigation that seeks broad injunctive relief on constitutional grounds from which individual members cannot opt out.


Sarah Bassing/University of Washington
The Washington Department of Fish and Wildlife let a lethal-removal order expire Sept. 26 without removing any wolves in the Togo pack.

WDFW lets order expire with no wolves removed

By DON JENKINS
Capital Press

The Washington Department of Fish and Wildlife let a lethal-removal order expire Sunday without killing any wolves in the Togo pack in the Kettle River Range of northeast Washington.

The department has not documented an attack on livestock in the pack's territory for 40 days, agency spokeswoman Staci Lehman said in an email Monday.

Fish and Wildlife Director Kelly Susewind has now authorized the department to use lethal control against the pack five times since 2018. The department has removed one wolf in the five tries.

Scott Nielsen, who heads up the Cattle Producers of Washington's wolf-livestock conflict program, predicted the pack will resume attacking cattle next year.

"We're in this continuous spiral," he said. "I think these kill orders have become meaningless. I don't think they had much intention to kill wolves."

The Togo pack attacked three calves within 30 days this summer, crossing the threshold on Aug. 17 for the department to consider lethal removal.

Nine days later, Susewind authorized killing one or two wolves, saying it was likely that attacks on cattle would continue.

Four days later, the department stopped looking for wolves, saying a 14-day window for changing the pack's behavior had closed.

The order didn't officially expire until Sept. 26, but the department did not resume searching for the pack.

Because of the pack's record, the department made the Togo territory a "special focus area" this year. Ranchers adopted new non-lethal tools, such as electronic ear tags and cow bells to keep track of cattle.

The department's failure to remove wolves will test ranchers' patience and the department's credibility, Nielsen said.

"Their solution is always centered around what more the ranchers can do," Nielsen said. "To me, it really is a bad situation."

Nielsen said dead cattle are hard to find in the mountain range and that wolves are still harassing livestock. Ranchers will have a better counting of losses as cattle come in from summer ranges, he said.

The Togo pack this summer attacked calves belonging to three different ranchers. The attacks occurred on public and private land. The pack has five adults and four pups, according to Fish and Wildlife.

Oregon regulators fine California winery $50,000 in labeling dispute

By GEORGE PLAVEN
Capital Press

SALEM — The Oregon Liquor and Cannabis Commission has fined a California winery $50,000 for mislabeling wines that improperly referenced specific geographic regions in Oregon.

It is one of the largest alcohol fines ever issued by OLCC, stemming from precise rules about what can and cannot be included on a wine's label.

Copper Cane LLC, based in Rutherford, Calif., purchases winegrapes from approximately 40 Oregon vineyards to make Pinot noir and rosé under the brand name Elouan. The fruit is then trucked in dry ice back to California where the wine is produced.

Oregon winemakers and consumers began raising alarm in 2018 when they noticed that boxes of Elouan mention the Willamette, Rogue and Umpqua basins — regions that are federally designated as American Viticultural Areas, or AVAs, for their unique wine growing characteristics.

Under Oregon's labeling laws, wines must contain 95% of grapes from a particular AVA and be "fully finished" in that region to include its name on the label or marketing materials.

Though Elouan wines are made from Oregon grapes, they are technically produced in California and thus would not qualify to claim an Oregon AVA as its appellation of origin.


Mateusz Perkowski/Capital Press File
Winegrapes ripen in a vineyard in Oregon's Willamette Valley.

OLCC initially recommended revoking Copper Cane's certificate of approval to sell wine to Oregon wholesalers, though the agency and winery instead agreed to a settlement.

In addition to the fine, Copper Cane agreed to abide by all wine labeling standards.

Steve Marks, OLCC executive director, said in a statement that alcohol regulators and the wine industry collectively must continue to ensure that the unique locations where winegrapes are grown and produced are protected in the market, so consumers can be confident of the source of the wine they buy.

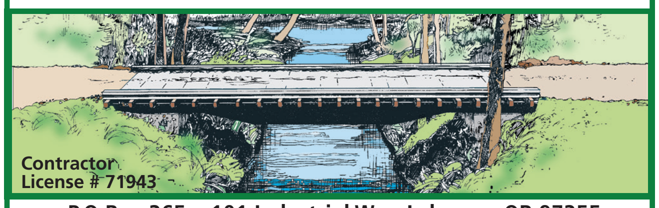
"In this case we used the agency's limited regulatory tools to protect Oregon's brand, in the same way we would respect the brands from other wine growing regions," Marks said.

As part of the settlement, Copper Cane did not admit to any wrongdoing. The company has argued it used labels that were previously approved by the federal Alcohol and Tobacco Tax and Trade Bureau. It later voluntarily surrendered nine labels amid complaints.

A representative for Copper Cane could not immediately be reached for comment.

While the OLCC dispute is now resolved, Copper Cane remains embroiled in a class action lawsuit filed by consumers over the alleged misrepresentation of its Elouan wines.

A federal judge recently declined to dismiss the case, which claims the winery violated state laws on false advertising, unfair competition and unjust enrichment, among others.



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