

# Ruling requires revisions for solar project expansion

By **MATEUSZ PERKOWSKI**  
Capital Press

To pass legal muster, a Central Oregon solar facility expansion plan must provide more specifics about mitigating impacts on wildlife habitat, according to a state land use ruling.

However, the West Prineville Solar Farm's developer, NewSun Energy, is optimistic the project can now proceed with "only limited refinements to the plan criteria," said Jake Stephens, its CEO.

The state's Land Use Board of Appeals said Crook County approved doubling the solar facility's size, from 320 acres to 654 acres, without "substantial evidence" its wildlife plan will ensure quality habitat mitigation that's reliable and durable.

The developer's wildlife plan also "lacks a schedule of performance measures" required under state law to ensure it will cause "no net loss" of habitat, the ruling said.

Despite these issues, NewSun Energy said it welcomes LUBA's order because the ruling has confirmed the mitigation plan is "appropriate and acceptable in form, size, scale, substance and type," as well as in its definition



Mateusz Perkowski/Capital Press File

**A land use ruling requires revisions to a wildlife mitigation plan for a Central Oregon solar facility expansion.**

of habitat, Stephens said.

For example, the plan can now move forward with "more tightly defined limits" on where mitigation occurs as well as "specific deed restriction language" that will shield the habitat mitigation site from future development, he said.

The company believes the plan already includes these elements and has exceeded the requirements of state wildlife officials, Stephens said. "Regardless, NewSun looks forward to continuing to invest in good faith in rural Oregon communities, including performing mitigation as required by law."

Crook County will have to

reconsider its authorization of the solar facility's expansion based on the the ruling's criteria and standards, most likely based on additional evidence from the project's developer, according to LUBA.

Last year, LUBA blocked the expansion project but the Oregon Court of Appeals said it incorrectly construed state land use law. The appeals court faulted LUBA for requiring the county to fully meet wildlife criteria that's meant for larger solar projects.

LUBA has now issued a new ruling based on instructions from the appellate court but has still found that the wildlife mitigation

plan needs to be improved.

The developer's plan to enhance an acre of wildlife habitat for every acre affected by the project, plus a "buffer" of additional acreage, is sufficient to conclude "there will be no net loss of habitat quantity," LUBA said.

However, the plan "lacks the specificity and definiteness" required by state law, since it proposes two options without providing enough details about the location of replacement habitat, effectively preventing third parties from evaluating the quality of mitigation measures, the ruling said.

Likewise, the so-called "V2 Plan" contains treatment options that are "too vague" to be evaluated for reliability and durability, "especially in the absence of defined performance measures," the ruling said.

"In conclusion, the V2 Plan is not substantial evidence in the record as to the quality of mitigation, the reliability or durability of mitigation, and lacks a schedule of performance measures required to be included in a mitigation plan," LUBA said. "Accordingly, the V2 Plan is not evidence a reasonable person would rely on to conclude that the development action meets the no net loss standard."

The Oregon Department of Fish and Wildlife, which had objected to the project's wildlife plan, can "absolutely" make the solar facility's expansion work under the ruling's requirements, said Greg Jackle, district biologist for the agency.

The new LUBA ruling is similar to the previous order and will assure a "very positive outcome for wildlife habitat," Jackle said. "This opinion will assure that wildlife impacts from the project will be off-set, protected and enhanced on a specific wildlife mitigation site."



Getti Images

**An appeals court has ruled a Grant County, Wash., farmer can have his irrigation case heard before the state Pollution Control Hearings Board.**

## Ruling aids Washington farmer in water dispute with Ecology

By **DON JENKINS**  
Capital Press

Grant County, Wash., farmer Ron Fode won a court victory May 12 in his five-year battle with the state Department of Ecology over water rights.

The Court of Appeals in Spokane ruled that Fode was wrongly denied a chance to challenge an order to stop irrigating in 2017. When Fode kept irrigating, Ecology fined him \$618,000, which was later reduced to \$260,000.

The ruling doesn't immediately change the fine, but it could allow Fode to get a new hearing before the Pollution Control Hearings Board, an administrative panel that hears appeals of Ecology decisions.

Fode's lawyer, Thomas Pors, said he planned to present evidence that Ecology issued the cease-and-desist order before offering technical assistance, as required by law. At a previous hearing, the board did not allow the evidence to be heard.

"Ron Fode's primary defense was disallowed entirely," Pors said. "The fine should be completely wiped out."

The case has been closely followed by the Washington Farm Bureau. In an amicus brief, the Farm Bureau claimed Ecology skipped over trying to get voluntary compliance and went straight to enforcement.

"It's a very important issue," Farm Bureau CEO John Stuhlmiller said. "What we're trying to get is transparency and equitable application of the law."

"This ruling was a victory," Stuhlmiller said. "Without it, Fode would have been dead in the water. This opens the opportunity to get a full win for Fode."

An Ecology spokesman said the department was reviewing the decision and had no comment.

Fode owns 130 acres and leased more than 400 acres in 2017, according to court records. He applied for a seasonal change in water rights in January, but was denied. In late June, he received an

order from Ecology to stop irrigating.

Fode sent 61 pages of legal documents to the hearings board to support his appeal. The appeal got to the board 34 days after Fode got the cease-and-desist order.

The board agreed with Ecology that the deadline was 30 days and dismissed the appeal without considering Fode's documents.

The appeals court studied the intent and grammar of the state law on filing appeals and ruled Fode actually had 35 days. The hearings board was wrong to disregard Fode's evidence against the cease-and-desist order, the court said.

The three-judge panel also said it's better to decide cases on the merits, rather than procedural technicalities.

The decision was not complete for Fode or the Farm Bureau's position. Just because the hearings board erred on the cease-and-desist order, it doesn't mean it was wrong to fine Fode, the court ruled.

"Simply stated, the validity of penalties issued by Ecology is not dependent on the validity of a prior cease-and-desist order," Justice Robert Lawrence-Berrey wrote for the court.

## NW winter wheat outlook 'considerably more optimistic' after last year's drought

By **MATTHEW WEAVER**  
Capital Press

Pacific Northwest wheat farmers are expected to produce nearly 56% more winter wheat this year coming off last year's drought.

USDA's National Agricultural Statistics Service projects the region will produce nearly 231 million bushels, up from 148 million bushels last year.

"With the crop ratings inching up week over week following the steady precipitation across much of the state, we are considerably more optimistic than this point last year," said Amanda Hoey, Oregon Wheat CEO. "The estimates are early for crop production yields, so they are likely to still change, and we remain cautious given the subsoil moisture levels."

"It will be good if the projected increase in winter wheat is realized," said Glen Squires, CEO of the Washington Grain Commission. "Certainly there has been more moisture

this spring compared to last year's drought. This is the first estimate of yield and they often are adjusted as there is still quite a bit of time before harvest begins."

Washington saw the biggest jump, with 120.6 million bushels, up nearly 70% from nearly 71 million bushels in 2021. Average yield per acre is expected to be 67 bushels, up from 42 bushels last year.

Idaho is projected to produce 66.4 million bushels per acre, up 46% from 45.4 million bushels last year. Average yield per acre is expected to be 91 bushels, up from 71 bushels last year.

That would tie for third-highest yield of all time, said Casey Chumrau, executive director of the Idaho Wheat Commission. Winter wheat yields in Idaho last year were a 30-year low, she said.

Oregon is expected to produce nearly 44 million bushels, up 38% from 31.7 million bushels last year. Average yield per acre is expected to be 61 bushels,

up from 45 bushels in 2021. Across the U.S., production projections are down 8%, dropping from 1.28 billion bushels to 1.17 billion. Average projected yield per acre is also down, from 50.2 bushels to 47.9 bushels this year.

"It has been a cool, wet spring in Idaho, resulting in slow crop emergence and late spring plantings," Chumrau said. "Much of the winter wheat is still small and we are looking for warmer weather in the next few weeks so crops start growing and farmers can finish planting."

"Timely rains are always critical," Squires said. "Hopefully we will not experience the high sustained heat that we saw last year in June."

Conditions that boost yields are also favorable for stripe rust, Hoey noted.

"Overall, the increased precipitation is supporting growth of a healthy crop and if it continues, we would expect to see a marked improvement over last year," she said.

## Burying irrigation lines saves water at Oregon hazelnut orchard

By **GEORGE PLAVEN**  
Capital Press

SILVERTON, Ore. — Roy Hari rode on the back of a John Deere tractor driven by his son, Dallas, digging a narrow trench to bury irrigation line between rows of hazelnut trees at his family's orchard near Silverton, Ore.

Last summer, Hari estimated the farm lost 15% of its water above ground to evaporation, particularly during a multi-day heat wave that saw temperatures as high as 117 degrees.

To make matters worse, thirsty critters like coyotes and raccoons figured out they could get a drink by chewing holes in the plastic tubing. With the water running overnight, Hari would wake up to find parts of the orchard submerged.

"There would just be a lake out here," he said. "Over the last few years, we've lost well over 1 million gallons water to varmits."

Earlier this year, Hari received a \$7,500 matching grant from the Marion Soil and Water Conservation District to buy and bury 13,000 feet of drip line to improve the farm's water conservation and efficiency.

Hazel Howell Farms — named for its

location at the intersection of Hazelgreen and Howell Prairie roads — has 35 acres of hazelnut trees planted in 2015. Hari said the orchard is heading into its third production year, when the trees produce a marketable crop.

Burying irrigation line will help to combat both evaporation and animal damage, Hari said. He doesn't want to shoot the coyotes that wander onto his farm, as they and other predators help control the vole and mice population that can also cause problems.

"We just want to take away the ability for them to do damage," Hari said. "We think this will be a solution to all that."

Hari figures it will take a few weeks to bury line among all 4,224 trees in the orchard. He is using a subsoiler mounted to the back of his tractor, with a single tooth plowing 5.5 inches deep as he and Dallas pass between the rows.

Simultaneously, Hari watches as the drip line slowly unspools from a wooden spool into the trench.

The line was previously placed right next to the trees, but the new one will run down the middle of the 20-foot rows. Hari said he believes this will encourage the trees to develop heartier and more robust roots as they must reach farther for moisture.

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Notice is hereby given that the following vehicle will be sold, for cash to the highest bidder, on 05/23/2022. The sale will be held at 10:00am by  
COPART OF WASHINGTON INC  
2885 NATIONAL WAY WOODBURN, OR  
2015 FORD XPL UT  
VIN = 1FMSK8D81FGA34796  
Amount due on lien \$1555.00  
Reputed owner(s)  
VAUGHN & MARCEEN RAMSEY  
OREGON STATE CREDIT UNION

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The Hamey Soil and Water Conservation District, as required through its policies, is informing potential vendors to visit the District office, website (www.hameyswcd.org) or Facebook pages frequently for upcoming public improvement projects. The projects will be posted to the District office/website/Facebook at least one week prior to award is made and includes solicitations using Bids, Requests for Proposals (RFPs), and Competitive Price Quotes and Competitive Proposals (as described in ORS 279C.400). Vendors who have signed up to work with the district must agree to carry a contractor's license and carry a minimum of \$2M in liability insurance. Complete information on the district's Resolution Adopting Public Contracting Rules and Procedures can be found at the website.

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COPART OF WASHINGTON INC  
2885 NATIONAL WAY WOODBURN, OR  
2018 TOYT CAM 4D  
VIN = JTNB11HK0J3046408  
Amount due on lien \$1415.00  
Reputed owner(s)  
KATHERINE & MICHAEL KELLY  
TOYOTA MOTOR CREDIT CORP

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2015 ACURA RLX 4D  
VIN = JH4KC1F98FC000507  
Amount due on lien \$1455.00  
Reputed owner(s)  
ZACHARY WAYNE SALISBURY  
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2021 TOYOTA SNA SV  
VIN = 5TDKRK2C2MS072141  
Amount due on lien \$1435.00  
Reputed owner(s)  
JINGWEI ZHU

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2016 HONDA CRV LL  
VIN = 5J6RM4H77GL015814  
Amount due on lien \$1435.00  
Reputed owner(s)  
JAMES & TERUKO SHIRES  
FIRST TECH FEDERAL CREDIT UNION

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COPART OF WASHINGTON INC  
2885 NATIONAL WAY WOODBURN, OR  
2015 NISS JUKE LL  
VIN = JN8AF5MVXFT561615  
Amount due on lien \$1555.00  
Reputed owner(s)  
CYNTHIA MARGARET NEWMAN  
BAXTER CREDIT UNION