

Lawsuits target Northwest farms over H-2A regulations

By MATEUSZ PERKOWSKI
Capital Press

Several Northwest farms have come under legal fire in recent years for allegedly discriminating against domestic workers in violation of federal H-2A foreign guestworker regulations.

While the lawsuits seek to redress the grievances of individual farmworkers, and several have been settled, some farm labor experts say the litigation reflects broader opposition to H-2A among union activists and their allies.

"I'm noticing an increasing number of lawsuits alleging misuse of the program, especially in the last two to three years. In my practice, I'm seeing a very clear trend," said Tim Bernasek, an attorney for several defendant farms.

Foreign guestworkers receive many benefits under H-2A, such as free housing and transportation, and strong protections under state labor laws along the West Coast, said Enrique Gastelum, CEO of Wafra, an organization that helps growers use the program.

Due to these safeguards and H-2A's growing popularity, the program may be seen as undermining efforts to unionize farmworkers, Gastelum said. "What benefit do they have from being unionized if they're already so well protected?"

The lawsuits filed against Northwest farmers have generally lacked a "strong evidentiary foundation," but the litigation underscores how careful growers must be navigating H-2A's complex regulations, said Bernasek, who leads the Dunn Carney law firm's agriculture, food and natural resources team.

"There are a lot of traps for the unwary," he said. "Don't think you know how to use this program, because you don't."

Bernasek said that farmers should seek professional help from organizations that are experienced in documenting compliance with H-2A regulations.

"You cannot provide a benefit to a foreign worker that is not available to a domestic worker," he said.

Michael Dale, an attorney with the Northwest Workers' Justice



Capital Press File

A domestic worker picks Rainier cherries in a Washington orchard. Several farms in the Northwest have faced lawsuits by domestic workers over the H-2A foreign guestworker program.

Project, said it's true that H-2A workers would probably be more difficult to unionize — albeit for different reasons — he denied that's the underlying reason for the lawsuits.

The organization represents farmworkers in some H-2A-related lawsuits.

Foreign guestworkers cannot switch between employers and want to be invited back into the U.S., so they're likely to resist joining unions to avoid risking their jobs, Dale said.

"It makes for a very compliant, hardworking, capable workforce," he said.

However, the only motivation for the lawsuits was that plaintiffs weren't prioritized for hiring as required under H-2A regulations, he said. Domestic workers must be prioritized for hiring until halfway through the contracted H-2A work season.

"They have a lawful priority to that work in the United States," Dale said. "That's where these lawsuits come from."

Though many farmers follow the H-2A program's rules, a "fair number" try to prevent domestic applicants from taking jobs, he said.

Domestic workers are disqualified for "reasons that don't make sense" or "given the runaround" to discourage them from applying, Dale said.

Labor shortages are real in agriculture and other industries but once farmers invest in using H-2A, they may become reluctant to hire domestic workers, he said. "Once you've laid out the money and secured the workforce, you want to get your money's worth."

Gastelum of Wafra said that H-2A employers aren't perfect and may make mistakes, but the program's regulations may also be exploited by problematic workers.

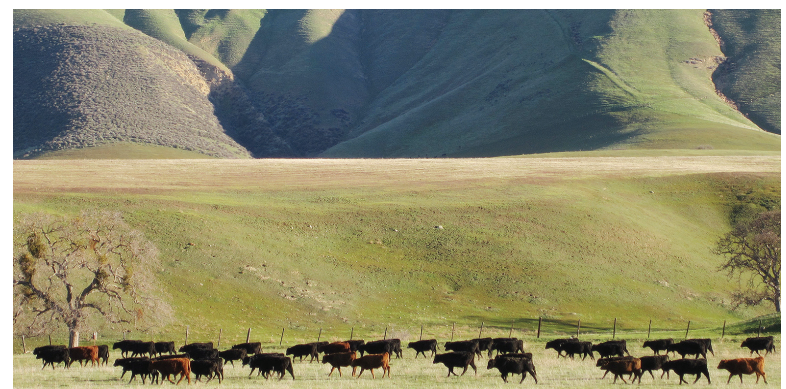
Farmworkers who don't meet employment standards may be disciplined or fired, for example, then blame the H-2A program for discrimination, he said.

"As with any workplace, that's going to raise negative emotions," Gastelum said. "You can definitely have drama pop up when a worker's performance is being questioned."

For this reason, H-2A employers should ensure their front-line supervisors are trained in proper coaching and management techniques, to avoid unnecessary conflicts and ensure workers feel their concerns are heard, he said.

"That will go a long way toward minimizing issues like this popping up," Gastelum said.

Likewise, farmers should hold meetings to ensure both foreign and guestworkers understand how the regulatory requirements of H-2A affect the entire workforce, he said.



Devii Rao/UC ANR

Cattle prices are higher but so are the prices of inputs, an economist says.

Cattle markets complex in 2022

By CAROL RYAN DUMAS
Capital Press

The cattle market outlook for 2022 is a mixed bag, an agricultural economist says.

On one hand, cattle prices are higher year over year. On the other, cattle ranchers are facing higher input expenses.

At \$140 per hundredweight, slaughter steer prices are 17.5% above 2021 prices.

"But even with higher prices, farmers and ranchers will travel a rocky road to profitability, paved with inflation and higher input costs in 2022," said Bernt Nelson, an economist with American Farm Bureau Federation.

Producers are facing increases in both feed and non-feed inputs, resulting in increased break-even prices.

"Whether cattle prices will increase enough to offset the increase in costs and provide profitability remains in question," he said in the latest "Market Intel" report.

"One of the greatest concerns faced by farmers and ranchers in 2022 is rising input costs, more specifically, feed," he said.

While cattle prices and input costs vary across the country, estimates for Iowa by Iowa State University give a general idea of current conditions versus a year ago.

In estimating returns to finish a yearling steer, total costs for April are estimated at \$1,832.86. Of those total costs, feed accounted

for 25.4% or \$465.35.

Feed cost this April increased nearly 12% year over year, and that increase was even steeper in March — up 22%.

Given a sales value on the finished yearling of \$1,872.78, an Iowa cattle feeder is looking at a \$39.92 per-head profit in April, according to the university's estimates.

But there's more to markets than cattle prices and input costs. Supply and demand also factor in, he said.

The cattle supply is forecast to decrease, as the industry is in the contraction phase of the cattle cycle. The calf crop on Jan. 1 was down 1.2% year over year, and the cow inventory was down 2.3% year over year.

While USDA is forecasting only a small decrease in domestic consumer consumption, beef imports also play a factor in markets — and those imports in March were up 29% year over year.

On the flip side, USDA is forecasting a 1.8% decline in U.S. beef exports in 2022 — although still well above the five-year average.

"A strengthening U.S. dollar will make it more expensive for other countries to buy U.S. beef while at the same time making it more affordable for the U.S. to import beef from other countries," he said.

Yet, first quarter beef exports were reported at record levels, primarily to the Asian markets with China leading the way, he said.

Easterday sentencing moved to September

By DON JENKINS
Capital Press

A judge has given ex-cattlemaster Cody Easterday more time to liquidate his Eastern Washington ranching and farming operations before being sentenced for defrauding Tyson Fresh Meats and a second victim out of \$244 million.

On May 24, U.S. District Judge Stanley Bastian in Richland granted a motion by Easterday's attorney, Carl Oreskovich, to push back sentencing to Sept. 19. Easterday had been scheduled to be sentenced June 13.

It was the fourth time Bastian has delayed sentencing. Easterday pleaded guilty March 31, 2021, and promised to make restitution. He faces up to 20 years in federal prison. The Department of Justice as not yet recommended a sentence.

In a court filing, Oreskovich said Easterday's continued participation in complex and adversarial bankruptcy proceedings was vital.

A plan to distribute money to the victims and other creditors is scheduled to be finalized this summer. The U.S. attorneys did not oppose waiting until September for Easterday's sentencing.

Easterday pledged to



Matthew Weaver/Capital Press File
Cody Easterday

repay \$233 million to Tyson and \$11 million to the second victim, identified in court as Segale Properties of Tukwila.

Easterday took money from the victims to buy and feed what turned out to be non-existent cattle. Federal prosecutors say Easterday used much of the money to cover his losses in trading in cattle futures contracts. He faces separate civil charges from the Commodity Futures Trading Commission.

U.S. attorneys objected last winter to delaying sentencing from January to June. Bastian, however, granted the delay, saying Easterday was fulfilling his promise to sort out what Bastian called a "mess."

The judge also noted that if Easterday had not pleaded guilty, his trial would probably still be pending.

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