

Farmworkers may owe attorney fees for ‘groundless’ lawsuit

By MATEUSZ PERKOWSKI
Capital Press

A married couple of farmworkers who pursued “groundless” litigation against an Oregon hop farm may have to pay its attorney fees, according to the state’s Court of Appeals.

In 2018, a judge rejected claims that 4B Farms of Mt. Angel, Ore., had unlawfully retaliated against the couple — Jackeline Rondin-Rios and Nahum Crispin-Zuniga — for seeking workers’ compensation benefits.

Though it’s “shocking that the case went to trial” because it was supported with “so little evidence,” the judge said state law precluded the farm from recovering attorney fees.

The Oregon Court of Appeals has now overturned that decision, ruling the farm is entitled to seek attorney fees based on the determi-

nation the allegations were “groundless.”

Defending against the lawsuit cost the farm more than \$100,000 in attorney fees, said Tim Bernasek, the company’s attorney.

If the farm pursues the matter, it’s likely to win “some type of fee award” based on the judge’s conclusion that the case was “meritless,” he said.

“If fees and costs are not given in a case like this one, it’s hard to imagine a case where they were warranted, so we felt like it was important to raise the issue with the Court of Appeals,” Bernasek said.

The appellate ruling is “particularly gratifying” because it’s often financially difficult for farm employers to seek vindication in “vexing” litigation, he said. “It is so costly to defend yourself that it’s rare farmers are will-

ing to take a case all the way to trial, like 4B Farms did.”

Attorneys for the Oregon Law Center, which represented the plaintiffs at trial, refused to comment on the appellate court’s decision or to provide contact information for the farmworkers. The nonprofit stopped representing the plaintiffs after the trial’s conclusion.

The plaintiffs did not hire attorneys or otherwise respond to the farm’s appeal, “which is not surprising given that they are seasonal farmworkers whose primary language is Spanish,” said Steve Walters, one of their former attorneys.

“Professional obligations of confidentiality to our former clients prevent us from saying anything further,” he said.

In the complaint, Jackeline Rondin-Rios claimed she filed for workers compensation benefits after falling from a

mechanized cart while stringing hops.

She claimed that 4B Farms intimidated and threatened her in retaliation for filing the claim and for making a workplace safety complaint, forcing her to quit and firing her husband, Nahum Crispin-Zuniga.

Marion County Circuit Judge Mary Mertens James dismissed the husband from the case because he “was never eligible to bring such a claim” under Oregon law and offered no “legal authority or evidence supporting his claim.”

During trial, the judge issued a rare “directed verdict” rejecting the wife’s allegations, ruling that she “did not present any evidence of discrimination on the basis of her status as an injured worker.”

The judge agreed with 4B Farms that “no reasonable jury could find in plaintiff’s favor,” since the company complied with Oregon law and didn’t

create any “intolerable working condition.”

“Plaintiff did not present — and never had — any evidence of a constructive discharge,” she said.

The farm was “never unresponsive” and didn’t take a “dismissive approach” to the woman’s complaint, instead giving her a “special light-duty assignment” as required, the judge said.

Her attorneys continued to “misrepresent the record” and “besmirch the motives, conduct or appropriate response” of the company, she said.

Even so, the judge did not order the husband to pay the farm’s attorney fees, since his “claim was forwarded as a result of his attorneys’ zeal rather than bad faith attributable to him.”

The wife was “represented by an attorney even before the injury occurred, making the situation more transparent than

ever,” the judge said.

Despite the farm’s “substantial expense in defending its employment practices,” the judge said the wife wasn’t liable for the company’s attorney fees.

There’s a “lack of support” in Oregon case law for granting “attorney fee awards for employers in the arena of employment discrimination claims,” she said. The policy is intended to “encourage vigorous enforcement of statutes prohibiting discrimination.”

Attorneys with the Oregon Law Center disagreed with the judge’s statements, which were based on “assumptions about our advice to our clients,” said Walters, the attorney with the nonprofit.

However, the plaintiffs did not further challenge the judge’s comments because they’d prevailed against the farm’s motion for attorney fees, he said.

Organic livestock rule nearing finish line, again

By CAROL RYAN DUMAS
Capital Press

An organic animal-welfare rule finalized in the Obama administration, quashed by the Trump administration and resurrected in the Biden administration is back for public review.

The USDA on Aug. 5 published the Organic Livestock and Poultry Standards proposed rule, updating organic standards with requirements for living conditions, care, transport and slaughter.

The Organic Trade Association said the rule represents a refinement and clarification of several organic animal-welfare provisions that were first introduced over 20 years ago.

“The Organic Trade Association has always fought for the highest animal-welfare standards in organic,” said Tom Chapman, OTA executive director and CEO.

OTA brought suit against USDA in 2017 for rescinding the original version of the rule, which garnered widespread support from the organic industry.

“Today marks the first significant movement on organic animal welfare in years,” he said.

“We hope that it also signals a willingness on behalf of USDA to listen to the organic industry and act swiftly to implement these common-sense reforms. Organic producers and their animals have waited long enough, it’s time for USDA to act,” he said.

New standards were set to go into effect in March 2017, but were delayed by an executive order by President Donald Trump, putting implementation of all pending regulations on hold.

USDA delayed implementation again in May and November 2017 and withdrew the rule in March 2018, stating it exceeds the agency’s statutory authority and could have a negative effect on voluntary participation in the National Organic Program.

The Organic Trade Asso-

ciation challenged the delays in court in September 2017, amending its complaint twice and challenging the withdrawal of the rule.

In December 2020, OTA filed a motion to extend the deadlines for summary judgment briefing to permit the incoming Biden administration time to evaluate the case.

The court granted the motion, and OTA and USDA in February 2021 and again in March 2021 requested a 30-day stay as they worked on a resolution.

USDA announced in June 2021 the agency will reconsider the Trump administration’s interpretation that USDA is not authorized to regulate the practices set forth in the 2017 rule.

Conventional livestock and poultry groups fiercely opposed the rule, citing health threats to animals and the public. They argued its animal-welfare standards aren’t based on science and are outside the scope of the Organic Food Production Act, which they said regulates only feeding and medication practices.

In addition, some contended the rule would vilify conventionally raised livestock.

USDA Agricultural Marketing Service will host a virtual listening session on the new proposed rule on Aug. 19 to hear comments live. Individuals who want to present oral comments during the virtual listening session must preregister by Aug. 15 at <https://www.ams.usda.gov>.

Written comments will also be accepted via [Regulations.gov](https://www.regulations.gov) (docket number AMS-NOP-21-0073) for 60 days from the date of publication.

The Organic Trade Association is analyzing the proposed rule and will provide more detailed feedback, as well as submit a formal comment to the record.

The National Organic Coalition is also conducting an analysis of the proposed rule and wants provisions that are at least as strong as the provisions that were finalized in 2017.



Idaho Power

Much of Idaho will remain in drought through the end of the water year.

Idaho drought likely to linger into new water year

By BRAD CARLSON
Capital Press

Much of Idaho likely will remain in some level of drought when the water year ends on Sept. 30.

Erin Whorton, a water supply specialist at the USDA Natural Resources Conservation Service in Boise, said about 68% of the state is drier than normal, and 45% remains in moderate to severe drought.

Some relief came with the wet weather last spring. But the hot, dry summer in much of the state leaves little time to make up ground before the water year ends, she said.

The dry pattern “really doesn’t let us get out of drought until we get into the wetter fall and winter months,” Whorton said.

She said that to end drought by Sept. 30, Idaho needs between 96% and 317% of normal precipitation, depending on the region.

The National Oceanic and Atmospheric Administration’s drought recovery tool pegs the probability of ending drought in the current water

year at about 50% in central and northern Idaho, 15% in the state’s southwest and 10-12% in the eastern Upper Snake River region. The Wood and Lost river basins in the east central mountains, and south Snake basins to the south and west, are less likely to recover.

The outlook calls for drought remaining throughout much of Idaho, with some improvement in the southeast along the Utah-Wyoming border area, Whorton said.

“Hopefully, we will have wet weather this coming fall,” she said. “And we need a big snowpack year.”

Upper Snake reservoirs’ system-wide volume as of Aug. 8 was 61% of normal, or about 1 million acre-feet below average, said Jeremy Dalling, U.S. Bureau of Reclamation water management lead for the region.

“We’re better off than we thought we would be but are still well below average,” he said.

Volumes left following the hot, dry 2021 irrigation season were low, as was snowpack for much of the 2021-2022 accumulation season.

Dalling said above-normal spring

precipitation improved the situation. So did crop selection, and saving and shifting irrigation water.

“It’s not as bad as it could have been,” he said. “It takes everyone working together to get through dry years like this.”

To the west, reservoir levels on the Boise River system, a Snake River tributary, are higher than 2021 and a little above the historical average, Whorton said.

Bob Carter, who manages the Boise Project Board of Control, said irrigation deliveries could end in mid- to late September, at least a month later than first predicted. Directors are expected to set a shutoff date during their Sept. 7 meeting.

He said many farmers had already changed their crop mixes last spring by the time unusually wet, cold conditions arrived, reducing demand and filling reservoirs.

“Hopefully, we can save some water” following irrigation season, Carter said.

Post-season carryover storage likely will be higher than last year, he said.

DEQ study tracks rising trend of wildfire smoke

By GEORGE PLAVEN
Capital Press

SALEM — As wildfires continue to burn bigger and hotter across the West, a new report shows Oregon is experiencing more days with poor air quality caused by smoke.

The state Department of

Environmental Quality monitors air quality statewide using a color-coded index that measures three main pollutants, including ground-level ozone, airborne particulates and nitrogen dioxide, which are combined into a final rating on a scale of 0 to 500.

The higher the value, the worse the air quality. For example, anything below 50 is considered “good,” while anything above 300 is “hazardous.”

In its latest annual study charting wildfire smoke trends, DEQ found the area from Portland to Bend to Klamath Falls is seeing a rise in the number of days with unhealthy air quality — particularly for sensitive groups such as children, the elderly, pregnant women and people with respiratory diseases.

DEQ began monitoring air quality from wildfire smoke in 1985. Wildfire smoke contains a variety of harmful particulates, including black carbon, nitrogen dioxide, carbon monoxide, polycyclic aromatic hydrocarbons and other volatile organic compounds.



Bill Breneman/EO Media Group File

Dense smoke caused by wildfires in Oregon’s Santiam Canyon two years ago blocks the sunlight.

The DEQ report breaks down its findings by region. Last year, Bend had 18 days in which the air was unhealthy for sensitive groups or worse due to smoke, setting a new record.

Klamath Falls had 38 such days, tying the record set in 2018, and Medford had 27 such days, the second-highest on record. Oregon’s largest wildfire in 2021 was the Bootleg Fire, burning 413,717 acres in Klamath and Lake counties.

Historical data also reinforces wildfire seasons are getting longer and smokier.

From 1989 to 2016, Bend totaled 10 days with air quality that was unhealthy for sensitive groups or worse caused by smoke, according to DEQ. That number shot up to 53 days from 2017 to 2021, a 430% increase.

In Klamath Falls, the air quality was unhealthy for sensitive groups or worse for 37 days from 1989 to 2014. That increased to 117 days from 2015 to 2021, up 216.2%.

While the Portland metro area largely escaped smoky skies last year, it too is seeing worsening impacts.

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VIN = WBADT43461GX25722
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