

USDA argues against prohibiting organic hydroponics

By MATEUSZ PERKOWSKI
Capital Press

The USDA is urging a federal appeals court to reject arguments that organic crops must be grown in soil and never with hydroponic production methods.

Critics claim that organic certification should be revoked from hydroponic operations because they cannot foster soil fertility as required by law.

The 9th U.S. Circuit Court of Appeals must now decide whether a lawsuit opposed to hydroponics in organic agriculture was wrongly dismissed last year.

Several soil-based organic farms and affiliated non-profit groups have asked the 9th Circuit to overturn the judge's conclusion that hydroponic operations don't need to comply with the soil-building requirement of organic law.

"The words 'organic' and 'organic farming' refer to soil organic matter. So soil-building is the foundation of the environmental benefits that consumers associate with the organic label," said Sylvia Wu, an attorney for the Center for Food Safety nonprofit, during recent oral arguments.

In hydroponic systems, plants commonly grow in containers filled with a soil-less medium, such as perlite, and are fed with liquid nutrient solutions.



Matthew Weaver/Capital Press File

Hydroponic butter leaf lettuce grows in a greenhouse. Opponents of hydroponics in organic agriculture claim the USDA has unlawfully allowed soil-less methods in organic production.

The USDA, which enforces organic regulations, countered that the Organic Foods Production Act's soil fertility rule simply isn't intended to apply to hydroponic production.

The agency's interpretation is more plausible than the claim that OFPA's soil health provision is meant to ban organic hydroponics entirely, said Daniel Winik, attorney for the federal government.

"That would have been a surpassingly strange way for Congress to create a soil

requirement, if soil were as central to organic production as plaintiffs suggest," he said.

Hydroponics have been debated in organic agriculture for years, with the National Organic Standards Board originally recommending that USDA ban such methods in 2010 but then voting down a similar motion in 2017.

In 2019, the USDA rejected a petition that demanded hydroponic methods be prohibited, concluding that soil-fertility

regulations need only pertain to soil-based organic operations. The Center for Food Safety and other plain-

tiffs then filed their lawsuit claiming the denial violated OFPA.

Critics believe hydroponically grown crops have benefitted large "corporate" greenhouse operators while flouting organic law and philosophy.

Organic producers who rely on such methods believe that opponents are using an overly restrictive definition of organic agriculture to suppress competition in the industry.

Last year, Chief U.S. District Judge Richard Seeborg in San Francisco sided with USDA, ruling that it's entitled to deference in allowing soil-less methods in organic agriculture.

Though critics claim the OFPA prohibits organic hydroponics, the law doesn't actually mention such methods, Seeborg said. Despite its requirement to improve soil health, the statute "doesn't compel any action" regarding hydroponics, Seeborg said.

borg said.

"One soil fertility provision nestled in one paragraph of one subsection cannot alter the character of the entire statute," he said.

The Center for Food Safety claims the ruling was wrongly decided, arguing that USDA's refusal to ban hydroponics has undermined OFPA's purpose of ensuring consistency in the organic market.

"We have two sets of identical tomatoes, except only some of them live up to the true meaning of organic," Wu said.

The USDA argues that the legislative history of the OFPA supports the conclusion that hydroponics aren't bound by the soil health provision required in organic farm plans.

"There's very good reason to think that organic plan requirements for crop production farm plans don't apply to hydroponic operations," Winik said.

Feds urge dismissal of farm's lawsuit against wetland projects

By MATEUSZ PERKOWSKI
Capital Press

The USDA has asked a federal judge to dismiss a lawsuit that alleges it helped finance wetland projects that disrupted a Washington irrigator's water supply.

Round Lake Farms, a hay grower and distributor near Soap Lake, Wash., claims the wetlands retain water that would otherwise replenish its irrigation source.

Typically, a creek downstream of the wetlands would rise enough in spring for water to spill into Round Lake, on which the farm relies for summer irrigation, according to the farm.

The farm's lawsuit claims the construction of wetlands has reduced the amount of water flowing into the lake or even disconnected it from creek flows, as occurred in 2020 and 2021.

Though the eight projects are on private property, the USDA's Natural Resources Conservation Service provided funding and technical expertise to convert the 2,200 acres of farmland into wetlands.

The farm argues that USDA didn't obtain required state reservoir permits for the wetland projects or adequately study their impacts on senior water rights.

The complaint seeks compensation for \$320,000 the farm spent on alternative irrigation sources and \$80,000 it paid to consultants who investigated the problem. The farm also wants a federal judge to order the wetlands removed or for USDA to mitigate their effects.

According to the USDA, the creek frequently failed to reach the "significant flood stage" needed to fill the lake long before the agency began buying wetland easements in the area about 20 years ago.

The USDA claims the farm only began complaining about insufficient water levels in the lake after it was issued a warning by state environmental regulators, who believed it was withdrawing excess water for irrigation.

For example, the farm accused a nearby landowner of building an illegal dam across the creek, but state regulators investigated and found no violation, the agency said.

lawsuit, the farm made allegations against the wetland projects that were likewise rejected by the state Department of Ecology, according to USDA. State regulators have the "exclusive enforcement authority" over water law, so the farm doesn't have a private right of action

against the USDA. Furthermore, the USDA claims the federal court lacks jurisdiction over the case. In regard to the wetland restoration program, the agency said it hasn't waived the "sovereign immunity" that shields the government from lawsuits.

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