

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

SCHULZ FAMILY FARMS LLC, an Oregon limited liability company; JAMES FRINK, MARILYN FRINK, individuals; and FRINK FAMILY TRUST, an Oregon revocable living trust,

Plaintiffs,

v.

JACKSON COUNTY, an Oregon municipal corporation,

Defendant,

and

CHRISTOPHER HARDY, individual; OSHALA FARM, LLC, an Oregon limited liability company; OUR FAMILY FARMS COALITION, an Oregon non-profit corporation; and CENTER FOR FOOD SAFETY, a non-profit corporation,

Defendant-Intervenors.

Case No.: 1:14:CV-01975-CL

STIPULATION TO STAY CASE AND TO NOT ENFORCE ORDINANCE FOR DEFINED TERM AND TO CONDITIONALLY RESOLVE LITIGATION AT END OF DEFINED TERM AND ~~PROPOSED~~ ORDER TO IMPLEMENT AND ENFORCE STIPULATION

The parties herein stipulate to the following:

1. In a complaint for declaratory relief, injunctive relief, and in the alternative, inverse condemnation filed November 18, 2014 (“Complaint”), Plaintiffs challenge the facial validity of Jackson County Ordinance 635, approved by ballot initiative 15-119 on May 20, 2014 (“Ordinance”) and enacted on June 6, 2014.

2. Pursuant to the text of the Ordinance, genetically engineered plants being grown in Jackson County, unless specifically authorized under the Ordinance, must be harvested, destroyed, or removed from Jackson County within twelve (12) months of enactment of the Ordinance.

3. The County and Defendant-Intervenors dispute Plaintiffs’ allegations set forth in the Complaint that the Ordinance is invalid or that the Plaintiffs will suffer any harm, including

an inverse condemnation, as a consequence of the Ordinance or of enforcement of the Ordinance.

For the purpose of this Stipulation, Defendant-Intervenors includes:

- a. Christopher Hardy;
- b. Oshala Farm, LLC, and its members, employees, and authorized agents;
- c. Our Family Farms Coalition (“OFFC”), and its directors, officers, employees, and authorized agents; and
- d. Center for Food Safety (“CFS”), and its directors, officers, employees, and authorized agents.

4. This Court has ruled [91] that the County and Defendant-Intervenors are entitled to summary judgment on Plaintiffs’ First Claim for Relief.

5. Plaintiffs and certain other farmers (“Opt-in Farmers”) grow Roundup Ready Alfalfa® (“RRA”), a perennial crop, that they planted prior to the enactment of the Ordinance on June 6, 2014. Under the express terms of the Ordinance, it is illegal for Plaintiffs and Opt-in Farmers to continue to grow their RRA, and if an enforcement action is brought against them, they could be required to harvest, destroy, or otherwise remove their RRA prior to the natural end of its useful life.

6. Plaintiffs’ only remaining claims, for inverse condemnation, have not been litigated at this time and the parties wish to conserve resources and, if possible, resolve the remaining dispute absent further litigation.

7. The County and Plaintiffs previously entered [18] into a stipulation to stay enforcement of the Ordinance until final judgment is entered in this case.

8. All parties agree to stay this case in its entirety until Plaintiffs and Opt-in Farmers remove their RRA, a period not to exceed eight years from the date this Order is entered, at the end of which period this stay shall terminate.

- a. Pursuant to the “Attorneys’ Eyes Only” designation under Stipulated Protective Order [37] entered by the Court, Plaintiffs will provide to counsel for Defendant-Intervenors (consisting solely of one hard copy to Earthrise Law Center and one hard copy to counsel for CFS) a sworn document signed by Plaintiffs or any Opt-in Farmer, as applicable,

identifying each field (using either GPS coordinates or a specific geographic location) in which Plaintiffs or Opt-in Farmers have planted RRA and the date on which they planted that RRA (“AEO Field Identification,” which is attached as Exhibit A) within thirty days after this Stipulation is filed with the Court.

b. All counsel for Defendant-Intervenors and the County that are identified under sections 7(a) and (b) of the Protective Order, and bound by the Protective Order, may inspect the AEO Field Identification at the office of Earthrise or CFS’s counsel. No electronic or other hard copy of the AEO Field Identification may be created or transmitted.

c. At the time Plaintiffs provide the AEO Field Identification to counsel for Defendant-Intervenors, Plaintiffs will provide a Confidential summary of the information (total number of farms and total acreage of RRA) that may be shared with Defendant-Intervenors.

9. During the course of the stay, Plaintiffs and Opt-in Farmers shall:

a. Cultivate and harvest their RRA prior to it reaching more than a 10% bloom, or as soon as possible thereafter if said harvest is delayed by circumstances beyond the farmer’s control, including, but not limited to, equipment malfunction, weather, or personal injury, illness, or death;

b. Monitor the roadways adjacent to any RRA field for any volunteer RRA at least quarterly and destroy any RRA volunteers that are observed outside RRA-planted fields;

c. Not plant any new RRA or replace the RRA already planted prior to June 6, 2014;

d. Not plant any other genetically engineered plants in Jackson County, unless under the conditions specifically authorized and exempted by section 635.05 of the Ordinance; and

e. Plaintiffs or Opt-in Farmers, as applicable, shall provide notice to Defendant-Intervenors in writing when they remove any field of RRA identified by Plaintiffs or Opt-in Farmers in the AEO Field Identification. Plaintiff or Opt-in Farmer, as applicable, shall complete the required notification within sixty days of the removal of the RRA field. Plaintiff or Opt-in Farmer, as applicable, shall provide the written notice to counsel for Plaintiffs, who will

then forward the written notice to counsel for Defendant-Intervenors. The County may review a copy of the notice from counsel for Defendant-Intervenors. Each Plaintiff or Opt-in Farmer is responsible only for his or her own field and his or her own notification, and the notification shall be treated as AEO. Failure to comply with this notification requirement shall be deemed a material breach of this Stipulation by the breaching farmer and violation of a court order, but will not breach the Stipulation as to other Plaintiffs or Opt-in Farmers.

10. During the course of the stay, the County and Defendant-Intervenors shall not bring any enforcement or other action pursuant to or in reliance on the Ordinance, or asserting the Ordinance as a basis of liability against Plaintiffs, or any Opt-in Farmer, related to their growing of RRA in compliance with Paragraph 9(a)-(e) of this Order (“Enforcement Action”). The County and Defendant-Intervenors will not act jointly with or support any person bringing or intending to bring an Enforcement Action against Plaintiffs or Opt-in Farmers. If Defendant-Intervenors become aware that any other person is contemplating an Enforcement Action against Plaintiffs or any Opt-in Farmer, Defendant-Intervenors will discourage that person from taking such Enforcement Action and not provide assistance to that person in an Enforcement Action.

11. No provision of this Stipulation shall be construed as determining or reflecting a determination on the merits of any claims or arguments asserted in the case.

12. The County agrees that it will not expend any resources in furtherance of any Enforcement Actions against any farmer growing RRA that was planted prior to June 6, 2014 so long as that farmer is growing RRA in compliance with the conditions in Paragraph 9(a)-(d) above.

13. During the course of the stay, Plaintiffs agree not to appeal or seek reconsideration of this Court’s Order [91] finding the Ordinance valid under Oregon law or any judgment based on the Court’s Order, or to file a motion or other submission seeking leave to appeal or to certify the Order under Rule 54. Each party agrees to bear its own fees and costs associated with the litigation of Plaintiffs’ first claim for relief before the district court.

14. In the event that a third party not bound by this Order brings an Enforcement Action against Plaintiffs, the County and OFFC agree to bring this Stipulation and stay to the

attention of the court or body in which the Enforcement Action is pending, and to alert the court or body, at least by way of letter, that the County and Defendant-Intervenors believe a stay or dismissal of that Enforcement Action is appropriate, unless the County and OFFC establish that the targeted Plaintiff was not complying with the terms in paragraph 9. Other Defendant-Intervenors may elect to join in any such action to be taken by the County and OFFC, but in any event agree not to oppose stay or dismissal as requested by the County and OFFC.

15. In the event that a third party not bound by this Order brings an Enforcement Action against any Opt-in Farmer, the County and OFFC agree to bring this Stipulation and stay to the attention of the court (at least by letter) and encourage stay of the case, unless the County and OFFC establish that the Opt-in Farmer was not complying with the terms in paragraph 9.

16. The following events shall permit Plaintiffs to file a motion in this Court invoking this Stipulation and seeking to lift the stay in this case:

a. The County or Defendant-Intervenors file an Enforcement Action against Plaintiffs or any Opt-in Farmer;

b. The County expends resources in furtherance of any Enforcement Actions against any farmer growing RRA in compliance with the conditions in paragraph 9, if the RRA was planted prior to June 6, 2014;

c. The County or Defendant-Intervenors assist or support any person in pursuing an Enforcement Action against Plaintiffs or any Opt-in Farmer; or

d. Any third party brings an Enforcement Action against Plaintiffs or any Opt-in Farmer, and the parties are unsuccessful in achieving the stay or dismissal of that Enforcement Action.

If the Court finds good cause for lifting the stay pursuant to this paragraph, the stay shall be lifted fourteen days thereafter.

17. The following events shall permit the County or Defendant-Intervenors to file a motion in this Court invoking this Stipulation and seeking to lift the stay in this case:

a. Plaintiffs appeal the Order [91] or file a motion or other pleading seeking reconsideration of, or seeking leave to appeal or to certify, the Order under Rule 54; or

b. Plaintiffs or any third party challenges the validity or application of the Ordinance, the process of its adoption, or brings any claim alleging inverse condemnation or similar cause of action caused by the Ordinance in any court or body.

If the Court finds good cause for lifting the stay pursuant to this paragraph, the stay shall be lifted fourteen days thereafter.

18. In the event the stay is lifted pursuant to paragraph 16 or 17 of this Stipulation, all parties shall retain their right to pursue any claims, defenses, or appeals in this litigation.

19. The parties shall notify the Court within thirty days of when this stay terminates in accordance with paragraph 8 of this Stipulation. Upon receiving such notice, the Court shall enter a final judgment submitted by the parties on Plaintiffs' first claim for relief and based on the Court's Order [91] upholding the Ordinance. Plaintiffs agree that if this stay terminates in accordance with paragraph 8, they will not attempt to appeal or seek reconsideration of the Court's Order [91] upholding the Ordinance or appeal from or seek reconsideration of the final judgment entered by the Court pursuant to this paragraph. Plaintiffs also shall dismiss their remaining claims with prejudice within thirty days of the entry of the judgment and each party shall bear its own costs and fees. Plaintiffs' agreement to not appeal the Order and any final judgment and to dismiss their remaining claims with prejudice is a material and enforceable part of this Stipulation to conditionally resolve this litigation.

20. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the parties to this Stipulation and Order to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance, modify, and/or resolve any dispute regarding the terms or conditions of this Stipulation, and for granting any further relief as the interests of justice may require. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE that an order shall be entered as follows:

This case shall be stayed in accordance with the agreement of the parties. The stay shall not be lifted, except upon (1) motion or notice of the parties pursuant to the terms of the

agreement of the parties set forth in this Stipulation or upon (2) dismissal of this case with prejudice by Plaintiffs. During the course of the stay, the County and Defendant-Intervenors shall not bring any Enforcement Action against Plaintiffs or Opt-in Farmers for the growing of RRA under the terms and conditions of the agreement of the parties set forth in this Stipulation. During the course of the stay, Plaintiffs shall not appeal the Court's Order [91], or file a motion or other pleading seeking leave to appeal or to certify the Order under Rule 54. If the Stay is ended pursuant to the terms of paragraph 8 of this Stipulation, then pursuant to paragraph 19 of the parties' Stipulation, this Court will enter a final judgment on Plaintiffs' first claim for relief, which Plaintiffs will not appeal, and Plaintiffs will dismiss their remaining claims with prejudice.

DATED this 17th day of December, 2015.

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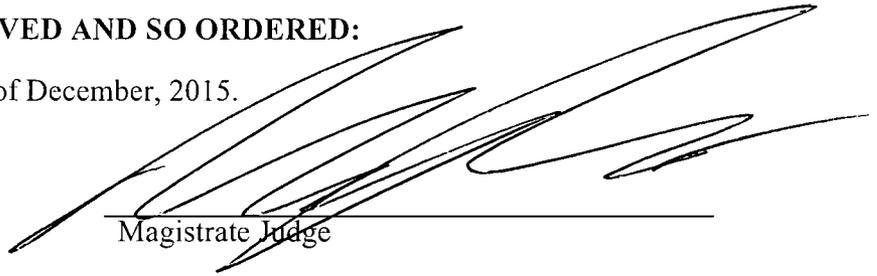
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IT IS HEREBY APPROVED AND SO ORDERED:

DATED this 22 day of December, 2015.



Magistrate Judge

ATTORNEYS' EYES ONLY—SUBJECT TO PROTECTIVE ORDER

EXHIBIT A

Name: _____

<u>Field Location</u>	<u>Date planted</u>

I agree to be subject to the Stipulation in *Schulz Family Farms v. Jackson County*, Case No. 1:14:CV-01975-CL, governing my growing of Roundup Ready Alfalfa®.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signed

Printed Name

Date