

Federal court turns down Roundup Ready alfalfa appeal

Contributed by Elizabeth Larson
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On Tuesday the United States Court of Appeals for the Ninth Circuit upheld a nationwide injunction on the planting of genetically-engineered Roundup Ready alfalfa until a full environmental impact study is completed.

In a 2-1 decision, the court upheld a ruling by District Court Judge Charles Breyer last May that USDA failed to address concerns that Roundup Ready alfalfa will contaminate conventional and organic alfalfa, with the potential to damage the environment and harm farmers.

At that time Breyer placed an injunction on further planting of the crop until the USDA completed the environmental impact statement. His ruling noted that, at the time, 200,000 acres of Roundup Ready alfalfa were planted nationwide.

The case was brought against the U.S. Department of Agriculture by the Center for Food Safety and several co-plaintiffs — Western Organization of Resource Councils, National Family Farm Coalition, Sierra Club, Beyond Pesticides, Cornucopia Institute, Dakota Resource Council, Trask Family Seeds and Geertson Seed Farms.

The groups sued the USDA in 2006, alleging the agency's Animal Plant Health and Inspection Service (APHIS) had violated federal environmental law in deregulating the crop in 2005 without first completing the environmental study.

Forage Genetics, which developed the Roundup Ready alfalfa seed, and Monsanto Co., which owns the intellectual property rights to Roundup Ready alfalfa, entered into the suit as defendant-intervenors.

Roundup Ready alfalfa is genetically engineered to be tolerant of glyphosate, the main ingredient in herbicide Roundup.

In November 2004, APHIS published a Federal Register notice on Monsanto's deregulation petition. The agency received 663 comments on the petition, 520 of which opposed it, according to court documents.

Alfalfa growers and seed producers, the court noted, had supported the petition, saying there was a demand for weed-free alfalfa. Those opposing deregulation, which included both organic and conventional alfalfa growers, cited concerns over gene transmission and rejection by foreign markets, and urged a full environmental evaluation be done.

After considering the comments, in June 2005 APHIS made a finding of no significant impact and deregulated the hay crop, according to court documents.

Roundup Ready alfalfa had been the focus of an ordinance taken to the Lake County Board of Supervisors in the fall of 2005.

The ordinance, proposed by the Coalition for Responsible Agriculture, sought to place a 30-month ban on planting Roundup Ready alfalfa in Lake County, as Lake County News has reported. The Lake County Farm Bureau opposed the proposal.

The board voted the ordinance down 3-2; Supervisors Gary Lewis, Rob Brown and Jeff Smith voted against it with Ed Robey and Anthony Farrington voting for it.

In her opinion issued Tuesday, Circuit Judge Mary M. Schroeder held that "Monsanto and Forage Genetics contend that the District Court disregarded their financial losses, but the district court considered those economic losses and simply concluded that the harm to growers and consumers who wanted non-genetically engineered alfalfa outweighed the financial hardships to Monsanto and Forage Genetics and their growers."

Circuit Judge N. Randy Smith was the dissenter in the decision, saying Breyer's court failed to hold a required evidentiary hearing before issuing the permanent injunction last May. He said he has "serious concerns" about the injunction's scope.

"At best, the record reflects sparse evidence of hay-to-hay gene transmission of Roundup Ready alfalfa in some areas of the country under certain planting conditions," Smith wrote. "Further, I see no good evidence of hay-to-hay or seed-to-seed gene transmission."

Smith said the nationwide injunction had "severe economic consequences" for Monsanto, Forage Genetics, as well as for farmers and distributors who depended on the alfalfa seed being available. Without an evidentiary hearing, Smith said he had no confidence in the need for a nationwide injunction pending the environmental impact study.

Monsanto did not respond to Lake County News' request for a response on Wednesday.

Andrew Kimbrell, executive director of the Center for Food Safety, said in a written statement that the ruling affirms a major victory for consumers, ranchers, organic farmers and most conventional farmers across the country.

"Roundup Ready Alfalfa represents a very real threat to farmers' livelihoods and the environment," Kimbrell said. "The judge rightly dismissed Monsanto's claims that their bottom line should come before the rights of the public and America's farmers. This ruling is a turning point in the regulation of biotech crops in this country."

Of the more than 70 crops the USDA has deregulated, only two — Roundup Ready creeping bentgrass and Roundup Ready alfalfa — have been required to undergo full environmental studies, according to USDA spokesperson Cindy Ragin.

Like the alfalfa crop, genetically engineered creeping bentgrass — commonly used for lawns and golf courses — also was the focus of a Center for Food Safety lawsuit that precipitated the study, according to court documents.

The creeping bentgrass study began in 2004 and is still ongoing; Ragin said there is no firm timeframe for completing the alfalfa study.

Earlier this year, the Center for Food Safety filed another lawsuit against a deregulated Roundup Ready crop, this time for sugar beets, claiming APHIS didn't thoroughly assess the crop's impacts before full release.

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