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Opinion

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Market will decide debate

Editorial

Rik Dalvit/For the Capital Press

The debate over genetically modified crops continues, as it should. But during the course of that debate, all sides need to set aside the rhetoric based on the fantastic precautionary principle that opposes all advances as potentially threatening and focus on the reality of the benefits and negatives of biotech crops.

Genetic modification speeds the process of breeding new hybrids. In plants especially, it has proved to be an extraordinary advance. For example, hybrids of corn require less fertilizer and fewer pesticides, and yields have skyrocketed.

Yes, there have been some negatives that have to be factored into the equation, such as the possibility of cross-pollination with non-GMO crops raised nearby.

Overall, though, it is difficult to argue that GMO corn has been less than a success.

The debate over some species of GMOs resides in the courts. A lawsuit challenging USDA deregulation of biotech sugar beets continues, and the U.S. Supreme Court has ordered a scientific review of biotech alfalfa.

At issue is the completeness of the USDA's review of those biotech crops before the agency deregulated them. Those reviews are being reviewed, and ultimately the judges will decide what the scientists are no longer allowed to decide.

Most recently, the GMO debate has broken out on still another front. Some farmers in north central Washington state have taken up the anti-GMO banner, this time against biotech wheat. Because much of the wheat grown in the region is exported to Japan and other parts of Asia and would likely find resistance among customers there, the farmers want their colleagues to ban it outright.

That would not be good, either for them or the industry.

All sides of the issue agree on one thing: The marketplace will dictate what kind of wheat is grown. In all of agriculture no sector is more sensitive to that than the wheat industry. U.S. wheat farmers and their representatives canvass the globe seeking out markets. They constantly ask current and potential customers what kind of wheat they want, and they do everything in their power to fulfill those requirements.

To say the wheat industry would willingly toss out decades of work cultivating overseas customers simply doesn't make sense.

Before GMO wheat — or any other kind of wheat, for that matter — is grown, the marketplace will be the deciding factor. No one will grow a crop for which there is no market.

At the same time, if GMO wheat were to make its appearance, other growers would be presented with a huge opportunity. In dairy and other agricultural products, non-GMO is a selling point in a segment of the marketplace. Growers would have the opportunity to market their non-GMO wheat in a niche market that would likely bring higher prices.

No matter which side farmers line up on, one undeniable truth emerges. Through all of the rhetoric, the marketplace will ultimately dictate what is grown. As long as farmers follow that truism, they will come out ahead.

USDA report provides seeds of optimism

Editorial

Rik Dalvit/For the Capital Press

It's easy to be discouraged as the economy continues to struggle to escape the ongoing recession. Unemployment isn't getting any better, home sales lag and consumer spending remains sluggish.

But last week a bit of good news came from USDA's Economic Research Service in the form of an estimate that shows net farm income will increase 24 percent in 2010 over last year's figure — $77.1 billion, up $14.9 billion from 2009.

Now 2009 was a tough year, so any improvement would be welcome. If the estimates hold true, however, 2010 will be the fourth-best year ever in terms of net farm income, and finish $12 billion higher than the 10-year average.

By the USDA's accounting, the income increase can be attributed to improvement of prices in several sectors.

• U.S. cattle prices are expected to increase more than $10 a hundredweight, while calf prices are expected to increase nearly $11 per hundredweight.

• Dairy prices, which fell dramatically last year after hitting record highs in 2007 and 2008, have rebounded and are above the 10-year average.

• Wheat exports are forecast to increase 36 percent. Recent drought and wild fires in Russia have pushed cash wheat prices above $7 a bushel at a time when many farmers are bringing in larger-than-expected crops.

• Poultry and egg cash prices are up, as are receipts for melons, vegetables and processing potatoes.

In addition to cash price increases, the USDA reports that the increase in farm production expenses has been held to just 1.1 percent. The recession has caused the cost of some inputs to fall, while limiting the increase of others. These savings will help the bottom lines of all farm operations.

We are reluctant to make too much out of a single forecast. But our own recent reporting has indicated that there is cause for hope. Exports are increasing, certain crops that had been written off early in the season have recovered, and unexpected failures abroad have pushed prices of individual commodities higher.

Clearly, there are plenty of individual producers who burned through a lot of equity in 2009. The industry still faces challenges from tariffs, environmental regulation and litigation, drought and a host of other factors beyond the control of farmers and ranchers.

Every downturn is followed by an upswing. We will allow ourselves to be cautiously optimistic, and hope that the worst of the recent unpleasantness is over.

Preserving the Delta smelt via ESA is constitutional

By RICHARD M. FRANK
For the Capital Press

Guest comment
Richard M. Frank

Recently, the Pacific Legal Foundation and San Joaquin agri-business interests have mounted a legal challenge intended to nullify efforts by federal wildlife officials to protect the Delta smelt.

The smelt is a small, non-commercial fish species that has traditionally inhabited California's Sacramento-San Joaquin Delta but is now close to extinction due to human activity — primarily the ever-increasing pumping of water from the Delta by the massive federal and state water projects to satisfy demands of urban and agricultural water users in Central and Southern California.

PLF's legal theory is that since the Delta smelt is currently found only in California, and because Congress' power under the Commerce Clause of the U.S. Constitution is limited to regulating matters "relating to" interstate commerce, federal regulators' efforts to save the smelt under the Endangered Species Act violate the Commerce Clause, are therefore unconstitutional and must be overturned by the courts.

But PLF's novel theory is wrong on the facts, and wrong on the law. Here's why:

The Delta smelt wasn't always a purely intrastate, non-commercial species. Smelt were apparently harvested commercially in the 19th and early 20th century. Similarly, and as the federal judge who rejected PLF's constitutional challenge observed, it would be ironic indeed if the federal government were free to protect a commercially thriving species that exists in abundance across the U.S., but becomes powerless to act once economic exploitation has driven that species to the brink of extinction.

Similarly, why should a species be viewed for legal purposes only at a point in time when its range and habitat have been severely circumscribed by human activity, rather than at an earlier time when, under natural conditions, it thrived and was extensive?

But perhaps the most compelling facts are these: As scientists observe, the first rule of ecology is that everything is connected to everything else. And that rule applies with particular force in the Delta, one of the most complex and historically diverse ecosystems in North America. The smelt serves as a critically important "indicator species" — the proverbial "canary in the coal mine."

In recent years, scientists tracking the precipitous ecological decline of the Delta have focused on the smelt as the best gauge of the overall environmental health of the Delta region. As goes the smelt, so go a variety of other fish species better known to Californians — such as multiple species of salmon that annually migrate through the Delta and upon which much of our commercial fishing industry depends.

Business interests and developers have attempted for years to use the Commerce Clause as a means of circumventing the salutary goals of the Endangered Species Act. Four different federal appellate courts around the country have confronted constitutional challenges like the one PLF has advanced against the smelt. Each and every time, those courts have found the challenges to be without legal merit.

Most recently, the U.S. Circuit Court of Appeals in Atlanta rejected that precise legal argument, when it ruled that federal wildlife officials can rely on the ESA to protect the Alabama sturgeon, a purely intrastate fish species with little or any commercial value. That court quite reasonably concluded that the protection of the threatened sturgeon under the ESA is "an essential part of a larger regulation of economic activity."

That rule made sense in connection with Alabama and its imperiled sturgeon. It makes similar sense with respect to California's Delta smelt. Every reported case that's addressed the question has upheld the ESA against Commerce Clause-based attack. So should the appellate court in this case.

No one can reasonably deny that California's Delta is currently in a state of perilous environmental decline, and that this decline is directly attributable to human activity.

The Delta smelt, which stands precipitously close to extinction as a result of those activities, now depends on the Endangered Species Act for its survival. PLF's ill-considered court challenge to federal efforts to preserve the smelt is without legal merit.

It also represents fundamentally unsound public policy.

The Delta deserves to be protected and restored. So does the Delta smelt.

Richard Frank is executive director of the Center for Law, Energy and the Environment at the University of California-Berkeley School of Law. During 2010, he is a visiting lecturer at the UC-Davis School of Law.

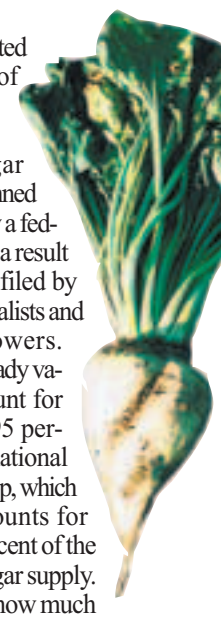
APHIS to help bio-beet growers

Editorial

We have to tip our hat to the USDA's Animal and Plant Health Inspection Service.

Last week APHIS announced that it plans to have rules regulating the use of Roundup Ready sugar beet seeds by December, and will be issuing permits within two weeks that will allow planting of a seed crop this fall in Oregon's Willamette Valley.

That's good news for growers.



Unregulated production of Monsanto's Roundup Ready sugar beets was banned last month by a federal judge as a result of a lawsuit filed by environmentalists and organic growers. Roundup Ready varieties account for more than 95 percent of the national sugar beet crop, which in turn accounts for about 50 percent of the domestic sugar supply. It isn't clear how much conventional seed is available.

During the course of that case, APHIS said it could take nine months to formulate interim rules governing use of the crop as it works to finish an environmental impact statement the court said was required as part of the process to fully deregulate Roundup Ready sugar beets.

Under that timetable, the rules would have come after rootstock growers in Idaho and the Midwest normally begin planting their crop, and six months after seed growers put their crop in the ground. If APHIS is able to meet its new deadline, growers should have time to plan next spring's planting and the 2011 seed crop.

APHIS said its partial deregulation will follow restrictions it had proposed to the court earlier this year. Those restrictions included:

• Prohibiting use of the seeds in California — where sugar beets are no longer a significant commodity — and in 19 counties in Washington west of the Cascades.

• Establishing 4-mile buffer zones in Oregon's Willamette Valley between fields where the biotech seeds are produced and crops that could be cross-pollinated, including Swiss chard, sugar beets, table beets and fodder beets.

• Requiring growers to provide GPS coordinates of Roundup Ready beet fields to APHIS. The agency said it would disclose only the fields' distances from potential cross-pollinating crops, and only to growers who request the information.

• Detailed restrictions on how seed producers can handle biotech seeds, with a third party certifying compliance.

• Requirements that all root-crop growers remove flowering plants before they produce pollen or seed.

APHIS also said it is issuing permits to seed producers to continue cultivation.

Sugar beet growers still face challenges. Earthjustice, one of the plaintiffs that challenged USDA's original deregulation of Roundup Ready sugar beets, said last week it was considering another lawsuit to block APHIS from issuing permits to seed growers. Plaintiffs have also said they would likely challenge interim rules once they are issued.

We still suggest growers carefully weigh their options for next year's crop. But if APHIS issues the short-term rules on its new schedule, growers will have more options than may have otherwise been the case.