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### Another Harmful Court Decision for Farmers

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A San Francisco U.S. District Court judge has again ruled against USDA, Monsanto and sugar beet producers. There have been numerous articles and news stories declaring sugar beet producers cannot use Round-Up-Resistant sugar beets for planting next spring.

This decision is a wakeup call for USDA and all agriculture!

Last November I wrote how Monsanto's court loss hurts farmers. ([www.farmfutures.com/blogs.aspx?ddlb=23&ddlc=0&ddls=11%2f1%2f2009+12%3a00%3a00+AM](http://www.farmfutures.com/blogs.aspx?ddlb=23&ddlc=0&ddls=11%2f1%2f2009+12%3a00%3a00+AM)) The Court was most critical of USDA and defendants in handling environmental issues associated with Roundup Ready sugar beets. His decision was not the end of this matter.

The new decision issued Aug. 13, 2010, hurts farmers even more and sends a message regarding how one court views the application of the National Environmental Policy Act (NEPA) to actions of USDA and its Animal and Plant Health Inspection Service (APHIS).

APHIS made a decision under its authority to deregulate genetically engineered sugar beets without preparing an environmental impact statement (EIS).

I have read a number of articles regarding this loss for agriculture. The stories for the most part are correct in their conclusions, but do not accurately reflect what U.S. District Judge Jeffrey White actually said from a legal standpoint. The details of his decision are important to understand for the future.

The Plaintiffs need to be more clearly identified. The Center for Food Safety claims to work to "...protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and other forms of sustainable agriculture." The Center claims a grass root action network of over 100,000 members who advocate for socially just and sustainable food systems.

Another Plaintiff against USDA and Monsanto is the Organic Seed Alliance, whose work "...promotes the value of seed and seed saving skills..." Another Plaintiff, High Mowing Organic Seeds, is a business which makes available to home and commercial growers over 450 varieties of heirloom vegetable, fruit, herb and flower seed. High Mowing claims that it has "...a deeper understanding of how re-built food systems can support health on all levels."

These Plaintiffs, along with the Sierra Club, defeated USDA, its counsel – the U.S. Department of Justice, the American Sugar Beet Growers Association, American Crystal Sugar Company, U.S. Beet Sugar Association, Monsanto and Syngenta.

**Narrow legal issue** The decision by Judge White involved a narrow legal issue raised by The Center for Food Safety. Plaintiffs sought a vacatur (An order of court by which a proceeding is set aside or annulled) of the APHIS decision to deregulate genetically engineered sugar beets. The Center for Food Safety succeeded.

The Court opinion is really an analysis regarding whether USDA's decision could be remanded for APHIS to correct its alleged errors without nullifying the original decision.

The court spent considerable time on reviewing the requirements of the Administrative Procedures Act, which basically declares if an agency action is arbitrary, capricious or not in accordance with the law, the agency action "shall" be set aside or nullified.

The Court said that USDA's decision was so one-sided with such irreversible consequences to the environment that the APHIS decision must be vacated or nullified.

The Court's analysis leads to the conclusion that genetically engineered sugar beets cannot and must not be planted after August 13, 2010. The Court's vacatur action does not apply to any sugar beet root and seed crop planted before August 13, 2010. The Plaintiffs had sought to even stop the sales of genetically engineered sugar beets planted before August 13, 2010.

The Court was asked to issue a permanent injunction against the planting

of genetically engineered sugar beets, but the Court said by vacating APHIS's deregulation decision, it was sufficient to stop all use of genetically engineered sugar beets until a sufficient EIS is completed.

Some predictions suggest the EIS will not be completed until 2012!

The Court appeared to be offended that USDA and other defendants suggested remanding the regulation for revision without vacating APHIS's decision. The Court wrote that defendants suggested the APHIS deficiencies "...were not that serious or numerous and seemed certain that APHIS will affirm its decision to deregulate genetically engineered sugar beets upon remand."

The Court did not respond kindly to this defense. The Court, to put it mildly, said it disagrees with the defendants' assessment and seriousness of the APHIS errors. The Court also said, "APHIS's errors are not minor or insignificant."

The court seemed to be insulted as it said the new USDA review appears that will be a "mere formality" and that according to the Court, "causes some concern that Defendants are not taking this process seriously."

This is a jarring Opinion from a US District Court judge not reflected in most news reports. When a Court writes that defendant(s) are not taking the Court seriously, this strongly suggests a different approach and attitude must be considered.

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