Oyster Farmer Sues Feds Over Eviction

JASON DEAREN,Associated Press

SAN FRANCISCO (AP) — The owner of a popular Northern California oyster farm that was recently evicted from a national park said on Tuesday he is filing a lawsuit challenging Interior Secretary Ken Salazar's decision to make the area a designated wilderness.

The lawsuit filed by Kevin Lunny, owner of Drakes Bay Oyster Co. along Point Reyes National Seashore, claims Salazar and others failed to comply with national environmental law, violated his constitutional rights and are illegally taking millions of dollars of his property.

"We are fighting for our community, our employees and family against a federal bureaucracy," Lunny said during a conference call with reporters.

For decades oystermen have grown the delicacies in what is now federal land. But in 1972, the federal government gave the oyster operation, then owned by someone else, a lease that expired in 40 years.

In 1976 Congress designated the waters of Drakes Estero — where the farm is located — as a potential wilderness area. Salazar's decision returned the area officially to wilderness.

When Lunny bought the farm in 2004 he knew the lease was set to expire, but believed he could get it extended.

After a contentious yearslong battle over whether or not the oyster farm's operation disturbed wildlife and native plants, Salazar cited the 1976 Congressional mandate and deal made decades ago to return the area to nature and the public.

A key issue in Lunny's lawsuit is whether the National Park Service and Salazar were required to undertake extensive environmental review under the National Environmental Policy Act, or NEPA.

The lawsuit contends that environmental review was required, and that the federal government failed to perform the review adequately.

Proponents of the eviction said the law gives the Interior Secretary the power to make the decision without environmental review. They said review in this instance was done out of an abundance of caution, not because it was required.

"The secretary made his decision after careful consideration of the applicable law and policy," Blake Androff, an Interior spokesman, said. "The Department will carefully review the complaint and any related materials that may be filed." He would not comment further.

The oyster farm battle even divided the state's two powerful senators. Sen. Dianne Feinstein, D-Calif., criticized Salazar's decision as based on flawed science, while Sen. Barbara Boxer issued support.

Lunny's lawyers said they intend to ask a judge on Friday to issue an injunction that would block the oyster farm's eviction while the lawsuit makes its way through the courts.

The oyster farm was given 90 days to cease operations after its lease expired Nov. 30. The company can continue harvesting during that time.

Lunny said there are millions of young oysters in the water representing millions of dollars in lost revenue if he is forced to tear them out in 90 days.

The farm produced about 40 percent of California's commercial oysters.

"Oysters used for food in (San Francisco) Bay Area will have to be imported now," Lunny said.

Environmentalists who opposed extending the oyster farm's lease said the process was fair and thorough, and that the lawsuit is sour grapes.

"Taxpayers bought this property and it was long-planned to be our first marine wilderness on the West Coast," Neal Desai, associate director of the National Parks Conservation Association, said.

"This lawsuit is clearly an attempt to privatize (Drakes) Estero and rob the public of this great gift the secretary has given all Americans. The company should really move on."

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