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DJ FOCUS: Disgruntled Beet Growers Sue Western Sugar Cooperative

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By Susan Buchanan

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Beet growers dissatisfied with the Western Sugar Cooperative want out of their production contracts, but the Denver-based group says they can exit only by finding willing buyers for their shares.

In one of many grievances, beet producers who had hoped to plant more corn and other ethanol feedstocks in the biofuel boom contend the co-op was inflexible when it came to allowing acreage shifts. Ethanol demand helped drive grain prices through the roof from 2007 into 2008, making beet cultivation less attractive.

Colorado shareholders Luft Farms, LLC, and growers Allen and Connie Reuter, in a Sept. 17 complaint filed against Western Sugar in U.S. District Court in Denver, are seeking to terminate contracts with the co-op.

Western Sugar Cooperative is a grower-owned processor with nearly 1,400 shareholders in Colorado, Montana, Nebraska and Wyoming.

After the September complaint, Western Sugar said that the shareholders' obligation to deliver one acre of beets, for each share of patron-preferred stock owned per year, had been challenged. "The cooperative intends to vigorously defend against the claims in that lawsuit," the company said in a statement this fall.

Coercion of Farmers Is Unlawful Under Act

Denver-based attorney James Hubbell of Kelly Garnsey Hubbell + Lass LLC, representing the growers, said plaintiffs complained in the suit that the cooperative's board of directors has often amended its shareholder

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agreement without the consent of members.

The co-op's shareholder agreement is reviewed yearly by the board of directors but changes aren't approved by the members - unlike some larger cooperatives, including American Crystal Sugar Co. in Minnesota, where members vote on contracts. Western Sugar altered the grower agreement early in the 2003 season without the permission of producers, the complaint says.

Growers contend that a "perpetual obligation" of Western Sugar shareholders to deliver crops annually is prohibited by the Agricultural Fair Practices Act, Hubbell said. Coercing farmers into or out of producer-group membership is unlawful under that act.

Shareholders claim Western Sugar imposes harsh penalties on members who don't deliver beets. For its part, Western Sugar maintains that the co-op is trying to ensure enough beets for its factories.

Plaintiffs in the suit are asking the court to terminate their co-op contracts partly because of factors beyond their control. High prices of corn and other crops used for biofuel made land leases more expensive in recent years, and in turn made acres committed to beets less rewarding. Producers in the suit have traditionally leased land from other farmers, but strong demand for rented ground pushed them out of the land market recently, according to Hubbell.

By early this year, more than 10% of Western Sugar shares were listed for sale on the company's Web page, with buyers scarce.

Kent Wimmer, director of shareholder relations for Western Sugar, said the cooperative doesn't comment on litigation.

Complaint Could Become Class Action

The complaint filed on Sept. 17 "is not yet a class-action suit, but could soon become one," Hubbell said. All the nearly 1,400 co-op members are "potential members of the class," the complaint states.

The three plaintiffs - Luft Farms and Allen and Connie Reuter - have filed a motion for a preliminary injunction, voiding provisions of the shareholder agreement that they object to, he said. A hearing on that motion will be held in federal district court in Denver on Nov. 21.

This fall, Western Sugar said that in defending itself against the plaintiffs' suit, "the cooperative will be supporting the overwhelming majority of cooperative shareholders, who understand that they will prosper by working together and keeping the promises they have made to each other. Shareholders in the Western Sugar Cooperative have enjoyed unprecedented success since they came together to form the co-op in 2002."

Western Sugar also said this fall that "beet payments per acre have steadily risen over the years. Sugar prices are strong and the 2008 crop has the potential to represent a high water mark for the Western Sugar Cooperative."

Raw sugar prices in the U.S. remain moderate, however, under the government sugar program controlling imports and amounts that growers can sell. The nation's refined sugar prices are high but the co-op's farmers benefit little from that premium to beets.

The Western Sugar Cooperative evolved from the Western Sugar Co., a subsidiary of Tate and Lyle North American Sugars Inc. In 2000, producers organized under Rocky Mountain Growers Cooperative decided to try to acquire Western Sugar Co., and did so in 2002 - becoming the Western Sugar Cooperative.

The shareholders' agreement under previous ownership by Western Sugar Co. had a three-year term for growers, allowing them to renew their

membership at the end of the term, according to the September court complaint. Earlier agreements allowed growers not to produce beets, for any reason, as long as they informed the company in a timely, written notice.

The plaintiffs in the September complaint claimed that the cooperative isn't being consistent with a stock offering memorandum issued by the Rocky Mountain Growers Cooperative in December 2000 that stated, "following the acquisition we intend to conduct the business of Western Sugar substantially as it has been historically operated."

At a special meeting last February, growers brought three petitions before Western Sugar Cooperative's board of directors, asking for financial relief.

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