

## King Family Fights Ecology's Fines, Criminal Charges Over Alkali Wetlands

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On February 10, 2023, the Washington State Department of Ecology (Ecology) released a [public notice](#) of a \$267,540 fine to be leveled against Wade and Teresa King of the King Ranch, who they claim “illegally damag[ed] at least 23 alkali wetlands...” in order to create stock ponds for their cattle in 2021. A Google Earth image of an alkali wetland in 2019 was compared to another in the same location in 2021 which showed a stock pond surrounded by machine tracks. This was the basis of Ecology’s pursuit of action against the Kings.

Past the fine, the Kings are facing criminal charges as well as the potential loss of nearly 13,000 acres of leased, public lands which they rely on for the management of their multi-generational cow-calf operation. Of the “damaged” wetlands, 18 were located on federal land, two on state land, and three on the Kings’ private land. Ecology also ordered the Kings to restore the alkali wetlands located on private land and stated they would need to provide access “through their land for the restoration efforts on state lands.”

However, the Kings and their attorneys, who filed a petition in December 2023, are arguing that Ecology violated the Administrative Procedures Act while also “illegally” and “quietly” amending policy which changed a long-standing and widely used exemption that does not require a permit for livestock water access.



The King family, pictured, is fighting back against Ecology’s fines and criminal suits alleging damage to 23 alkali wetlands on their owned and leased property. Photo courtesy of the Kings.

The Kings’ consultant, John Stuhlmiller – who has 39 years of legislative experience in environment, natural resource, land use, and water issues – said that Ecology’s actions could set a dangerous precedent.

“To my knowledge, this is the first time they {Ecology} have asserted” these kinds of penalties, Stuhlmiller said, continuing that, “It’s horrible what’s happened to the Kings, but you could be next.”

### **Alkali Wetlands**

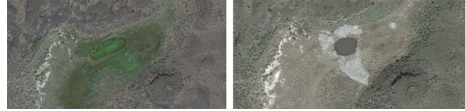
According to Ecology, wetlands “are land areas that are saturated or covered with water for at least some part of the year.” Though there are a variety of wetlands, Ecology explains that they share three common criteria:

- Hydric soils, which are defined as being “saturated long enough to produce anaerobic conditions,” are observed.
- Water-tolerant plants are present that are able to tolerate hydric soils.
- Water is present “at or near the land surface periodically or continuously during the growing season.”

In their February notice about the Kings' fine, Ecology stated that the damage to alkali wetlands "has degraded the water quality, and damaged habitat for migratory birds and unique plant and animal species."

In a request for clarification as to how the Kings "degraded the water quality" when the alkali wetlands on the Kings' property were dry and not connected to any body of water, Ecology's Deputy Communications Director, Andrew Wineke responded:

"In Washington, the water quality of all underground (groundwater) and surface waters – including water quality in wetlands – is protected by state law. Both the quality of the water within the wetlands and the beneficial uses they provide are protected by the state Water Pollution Control Act (Revised Code of Washington {RCW} 90.48) and other state laws. The water quality of the 23 wetlands identified in this case was directly affected by these actions."



In the left photo, according to Ecology's February 2023 release, is an alkali wetland located on King Ranch land in July 2019 (Image from Google Earth). The right photo shows a wetland located on King Ranch land in April 2021 with evidence of equipment tracks in and around the alkali wetlands (Image from Google Earth).

Wineke added that "in addition to their habitat value," alkali wetlands have "significant cultural importance" to local Tribes.

He noted that the areas excavated by the Kings "resulted in deep, steep-sided pools" along with the placement of new excavated soil, which Ecology argues is in "direct violation of water quality standards."

## ***The Kings' Perspective***

Stuhlmiller pointed out that the claims raised against the Kings illustrate the "horribly noisy system" regarding water, land use, and government entities' rights and "overreach." Around the time Ecology took issue with the Kings, the landmark *Sackett vs. EPA* case was being considered by the U.S. Supreme Court (SCOTUS). The SCOTUS decision, which was in favor of the Sackett family, emphasized that the definition of a wetland should be obvious to "the average person," Stuhlmiller emphasized, and must be connected to a moving body of water to be considered Waters of the U.S.

By that definition, the alkali wetlands on the Kings' owned and leased land "do not meet those definitions."

However, it's important to note that wetlands that don't meet the definition of Waters of the U.S., like in the Kings' case, are classified as "waters of the state," which continue to be regulated by Ecology, Wineke noted.

In any case, Stuhlmiller and the Kings purport that "If you are really in a wetland, the hydric soil is saturated," which it wasn't when the Kings dug the stock ponds, he explained.

"All they made were depressions that collect water for the livestock and wildlife to drink out of. It's a time-honored tradition, and in the dry, arid central part of the state, in particular, ranchers do it," Stuhlmiller said.

He added that, once these stock ponds are dug, they are not tampered with every year. Instead, it could be a decade, "maybe 80 years" until they need to be cleaned out again.

In response to Ecology's statement that the disruption of wetlands requires a permit (under chapter 90.48 RCW), the Kings' petition notes that chapter 90.44 RCW "provides a permit exemption that fully covers the alleged activities."

Along with the Kings' belief that they were well within their rights in digging stock ponds, Stuhlmiller said, "Ecology didn't ever attempt to engage in a constructive way."

"Ecology didn't allow the landowner to have a fair handling outside of the legal process," he added. "There was no technical assistance to the Kings."

With spring turnout fast approaching, the Kings are seeking conversation with the Department of Natural Resources outside of the courtroom to consider upholding their leases, which are “integral” to their operation.

Stuhlmiller reiterated that, to his knowledge, the Kings are the first producers being punished for this, and it should be a red flag to others across the country.

“If Ecology is all of a sudden going to enforce something that they’ve never enforced before, and you didn’t know they were going to enforce it until after they did, there should be a huge question mark in everybody’s mind about your ability to ensure your livestock have a water source.”

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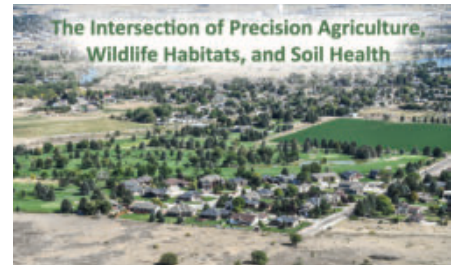
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