

Commentary: State wetland actions go beyond bounds of law

By JOHN STUHMILLER
Mar 22, 2024

Most of you have heard about the unprecedented actions by the Washington Department of Ecology and Department of Natural Resources against Wade and Teresa King at their ranch in Coulee City. This story of government abuse is so shocking it's unbelievable.



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The state is saying normal agricultural digging, in areas of existing and ongoing stock watering, violated the State's Water Pollution Control Act (WPCA) by "polluting" stock ponds, which Ecology now calls "alkali wetlands."

The state claims the alleged digging on the King Ranch caused "pollution" by allowing the soil to fall back onto the ground, and into small, ephemeral, isolated, dugout stock ponds, which would be dry most of the year if not dug out.

Ecology admits these ponds are isolated from other surface water, and believes the activities were done for stock watering, but insists on calling the activity "pollution."

The WPCA is about "water pollution," but Ecology wants to use that law to restrict the use of land that is usually dry. In the arid Columbia Basin, a dugout stock pond is only "ponded" year-round after a rancher conducts the recognized practice of digging watering holes for stock watering. Ecology wants to control these areas by calling them "wetlands," even though they don't even meet the legal definition for regulated wetlands. That definition requires "hydric" (water-logged) soils and other features that are missing here.

Ecology's position is clearly wrong for many other reasons. For example: State law says Ecology must: 1) consider all beneficial uses of waters of the state, including stock watering; 2) minimize the risk of agricultural conversion due to enforcement; 3) enforce RCW 90.48 in a way that does not interfere with water rights, including stock water; and 4) first apply "voluntary, incentive-based methods" before pursuing enforcement.

But Ecology did none of these things. I could go on, but the bottom line is: Ecology is regulating outside its authority, and is seeking to punish the Kings and scare farmers and ranchers into submission.

You've probably heard similar stories of Ecology abuse. But what you may not know is this: While Ecology was accusing the Kings of environmental violations and grazing lease violations, they were also conducting a secret criminal investigation.

The alleged crime was the same normal agricultural digging that Ecology was investigating as a civil violation. And in Ecology's civil investigation, Ecology staff members tried to trick the Kings into believing there was no criminal jeopardy and providing evidence about alleged violations.

It is illegal to use such deceptive practices when conducting parallel civil and criminal investigations (U.S. v. Stringer). Ecology worked closely with the Environmental Protection Division in the state attorney general's office, a group that normally investigates serious environmental crimes.

The state has also defamed and spread misinformation about the Kings and the alleged digging activities. Unfortunately, the agency's misinformation has created false narratives and myths that are influencing agency staff, elected officials, and even the agricultural community. These myths are superficially compelling but easily debunked.

Agency emails and other records show that the agencies rushed to judgment about lands and activities they didn't understand, manufactured a false emergency and a false narrative, and then spread the myths far and wide.

If you still find it hard to dismiss the myths, consider yet another recent regulatory action by Ecology and DNR that gives Ecology even more control. On April 3, 2023, Ecology and DNR entered into a secret Memorandum of Agreement (MOA) that illegally hands DNR's leasing and land management authority over to Ecology. The MOA gives Ecology nearly unfettered control over the terms of DNR grazing and other upland leases for the purpose of "wetland" protection. It was developed and signed without any public process, but it affects all DNR lessees.

With Ecology dictating which areas are deemed "wetlands," the King Ranch case shows how even the driest lands in our state are not safe from Ecology's power grab.

And Ecology's power grab doesn't stop with lands leased from DNR. Ecology is also alleging the same types of digging activities on the Kings' private lands are "pollution" and "criminal."

And all across the state, Ecology is fining landowners and restricting the use of private property by treating non-wetland areas as regulated wetlands. Left unchecked, this puts every agricultural operation and every landowner and lessee at risk.

The facts are clear: Ecology is using the Kings to further an agenda to "protect" the agency's preferred values while sacrificing agricultural values and practices, property rights, and the Constitution.

So, beware! This won't stop with Kings. You may be next. That is why we need to stand with the Kings to ensure justice and due process for all Washingtonians. Please express your support for the Kings, for the protection of our Constitutional rights, and for better government.

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