

'I think I inherited a troubled relationship'

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Letter causes fear

Bellon had been director for seven months when the state Supreme Court in August 2013 ruled against southeast Washington rancher Joe Lemire in his high-profile, decade-long battle with DOE.

"I remember that day vividly," Bellon said.

In an 8-1 decision, the court accepted the DOE's position that the cattle near Pataha Creek on Lemire's property represented a "substantial potential to pollute." That was reason enough for DOE to order Lemire to put up a fence to keep the cattle away from the creek, according to the court.

The lone dissenting justice, Jim Johnson, said the majority had set the bar too low for the department and was being too cavalier about Lemire's property rights.

The decision, according to Johnson, made every rancher with cows that occasionally drink from or cross a stream vulnerable to DOE's orders.

Bellon said she saw the decision as simply confirming DOE's authority to protect public waterways. She also said she didn't want another dispute to escalate into a Supreme Court case.

"I felt it was imperative upon me to reach out to the producer community and say, 'We need to do this work differently and start talking,'" she said.

"The minute I was notified about the decision, I picked up the phone and called some of my contacts in the agricultural producing community and said, 'I want to work to have a better relationship in the future. And I do not intend to use this decision as a sword.'"

But the re-set effort got off to a bad start.

That fall, DOE sent out more than 30 letters to landowners warning them that the department had seen signs that they are polluting streams that crossed their property.

DOE says the letters were not a follow-up to the Lemire decision, but the timing couldn't have been worse for patching relationships. The letters were seen as vague, threatening and indiscriminate.

"What we were trying to do was pick out the top areas of concern that we spotted and engage with community members and say, 'We think there might be something going on here, let's talk and engage.' And it wasn't quite perceived that way," Bellon said.

"The letters, I think, created some fear, and I don't deny that," she said. "I don't think we got it quite right."

DOE now tries a more "holistic" approach to initiating discussions about watersheds, with workshops and public meetings, she said.

"Will every single interaction be absolutely amicable? Probably not. But when we put our best foot forward at that initial engagement, it could set the tone of how these issues are resolved in the long run."

Sound science, or not

The words still come spitting out of ranchers' mouths: "substantial potential to pollute."

The phrase relates to the department's mission to prevent, not just react, to pollution.

DOE stresses the word "substantial" to suggest the agency won't act on a hunch, whim or flimsy allegation. DOE says it fines as a last resort and only after trying to get producers to correct the problem.

According to agency records, no cattleman was fined in 2013 or 2014 for water-quality violations. A Skagit County farm was fined \$1,000 in 2012 for failing to prevent livestock manure from draining into ditches leading to a tributary of the Samish River.

Ranchers stress the word "potential" and ask: Who doesn't have a potential to pollute? Every driver has the poten-



Courtesy of Wheat Life

Washington Department of Ecology director Maia Bellon, center, visits Eric Maier's wheat farm in Ritzville, Wash., in September 2013. From left are Dan Harwood of Palouse Rock Conservation District; Washington Association of Wheat Growers lobbyist Jim Jesernig; Ecology regional director Grant Pfeifer; WAWG's then-president Nicole Berg; Maier; and Ty Meyer with the Spokane Conservation District. Bellon created a new advisory group with agricultural representatives to tackle water quality issues.

Maia Bellon

- **Age:** 45
- **Residence:** Tumwater, Wash.
- **Education:** Graduate of The Evergreen State College; law degree from Arizona State University
- **Employment:** Director, Wash. State Dept. of Ecology, 2013-present
- **Budget:** \$458 million (2013-15)
- **Salary:** \$127,180 (2013)
- **Employees:** 1,400 fulltime, 200 temporary statewide



Capital Press graphic

tial to speed, but troopers don't write tickets for that, goes the well-worn analogy.

Sympathetic lawmakers have introduced bills that would require DOE to back up its charges with on-site water tests. DOE does test water, but it also uses visual clues, like cattle trails and bank erosion, to identify so-called non-point pollution sources.

Point pollution sources are things like smokestacks and wastewater pipes, which can be easily monitored. Non-point sources of pollution can be manure from cows or other animals.

Ranchers complain they're held responsible for pollution that may not be from their livestock. Still, legislation that would require DOE to pinpoint pollution sources with more scientific precision has not come close to passing. DOE opposes the idea, arguing the episodic nature of pollution renders relying solely on-site water testing ineffective.

Engelhardt, of the Cattle Producers of Washington, complains that relying on landscape appearances can be deceiving. "The guy with beautiful landscaping could be cooking meth in his basement," he said. "You have to base it on sound science."

Work in progress

So how is a rancher to know what's allowed and what's not?

The guidance document being vetted by the agriculture and water quality committee that Bellon and Stokes chair is supposed to provide an answer, sort of. The guidelines will leave room for on-the-ground interpretation.

"It's not going to solve all the problems or answer all the questions," said environmental lobbyist Bruce Wishart, who's on a subcommittee, which includes cattlemen, that has been drafting the guidelines. "We're hopeful producers are going to use this document and that it's less likely we'll have to pursue enforcement."

The draft that circulated in February at the full committee's last meeting was not quite seven pages. One sentence in the final paragraph jumped out to producers. The first clause states that livestock near streams is "not necessarily" a violation. But the sentence concludes, "... the only way to ensure compliance is to exclude livestock from the stream and riparian area."

Stevens County rancher Scott Nielsen, who's also on the committee, said the sentence was "pretty tough to swallow."

"It says to me, you have to fence your cows off the creek," he said. "If it's not edited, there's no way I'll agree with it."

Nielsen agrees that ranchers will have to accept DOE interpretations of ground conditions. But he proposes that DOE give ranchers stronger assurances that cattle can be in riparian areas if the livestock are managed to avoid pollution.

The draft came out shortly after Nielsen at a legislative hearing complimented DOE's willingness to listen to producers.

"I said nice things about Ecology, but it may be premature," he said.

Bellon said producers should consider the entire document.

"I know there's fear over one sentence, but I want it read as a whole," she said.

"Ultimately, my position is that there are multiple tools that can be put into place that can reduce the risk of water quality pollution," Bellon said. "If you want a 100 percent insurance policy, exclusionary fencing is a way to get there, but it's not the only means."

Stokes said it would be "huge" if DOE acknowledged that streams don't have to be fenced to be protected.

"If we can accomplish that with a guidance document, that moves things in our favor," he said.

Legislation to hold DOE to a higher standard of proof wasn't going anywhere this year, especially in the Democratic-controlled House. The Republican-controlled Senate gave the bill a hearing, but senators heard a lot about the pending guidance document and ranchers' hopes that it will ease conflicts.

"It completely neutered the law-making process, which is OK if it works," Nielsen said. "But if it doesn't, we'll be right back next year."

Working together

It wasn't as though hell froze over, but it was noteworthy when Yakima Valley Sen. Jim Honeyford, a Republican who's butted heads with Ecology officials over the years, praised Bellon two months ago at a public meeting.

"First time in 20 years we have a director of Ecology so willing to sit down and listen," he said. "I may not always agree with what she has to say, and I like to beat up on her every once in awhile, but I'm really pleased that she is listening and working for solutions, and that's what is important."

It wasn't the first time the veteran lawmaker had complimented Bellon publicly. Bellon was DOE's director of water resources for three years before newly elected Gov. Jay Inslee promoted her to director. Honeyford predicted then that she would be successful, telling a reporter that she works "outside the traditional way of doing things."

Bellon said she appreciated Honeyford's most-recent comment "and am trying to live up to that."

"I think I inherited a troubled relationship between the agricultural producer community and Department of Ecology, especially in the water quality arena and that, quite frankly, wasn't acceptable to me," she said.

"I support a vibrant agricultural community," she said. "My role as the state water regulator should not be perceived as impinging upon that or being detrimental to that community. It should be partnering with that community."

DOE's willingness to work with dairies on water-quality issues related to protecting shellfish beds draws praise from Washington State Dairy Federation director of governmental relations Jay Gordon. He called Bellon's top water-quality adviser, Kelly Susewind, a "pragmatic engineer."

Measure applies to corporations, governmental entities

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Nonetheless, the Oregon State analysis says the measure would stop research on cancer, bioenergy, wood crops, agricultural diseases and any other work that involves genetically engineered material. The Benton County voters' pamphlet says the measure requires all GE organisms in the county to be harvested, removed or destroyed within 90 days of the measure taking effect. The measure applies to corporations or governmental entities, according to the voters' pamphlet.

Mehlenbacher, who is credited with saving Oregon's \$120 million hazelnut industry, said his current work uses traditional breeding methods and would not be prohibited under the measure. But research he has proposed — to verify which gene is the filbert blight gene — would not be allowed, he said. Mehlenbacher said he doesn't plan to develop GMO hazelnuts, but the blight research requires using genetically engineered organisms.

He said the ballot measure is "extreme."

"And to do it in the county where the state's land grant university is located is even more extreme," he said.

Beckman, director of OSU's Environmental Health Sciences Center and a principal investigator at the Linus Pauling Institute on campus, tells an even starker story.

He and other international researchers are investigating a copper compound treatment that may extend the lives of ALS patients. Beckman uses mice and rats that are genetically modified with human genes that cause them to develop the disease.

Without treatment, the rodents die in four months. But treated rats and mice have survived for 18 months now, and continue to thrive.

"I basically stopped the disease with this compound," Beckman said. He has prepared a research paper for publication and hopes to begin trials on human patients this summer.

The prospect of the measure passing and being told, "Oh, you have to get rid of it in 90 days" is a disappointing sign of anti-science thinking, Beckman said. Some people may see it as a way to "strike a blow at Monsanto" but haven't thought through the consequences, he said.

"I'm a huge proponent of supporting small farms and diverse foods, I love the farmer's market," he said, "but it's easy to get wrapped up in emotion."

Moving the research project out of Benton County while maintaining the research animals in sterile conditions would cost perhaps \$30,000 or \$40,000, Beckman said.

"I would sue, the best I can," he said. "Whether I can, as a state employee, I don't know," he said.

One of the measure's chief backers says OSU's analysis is incorrect. Harry MacCormack, founder of the organic Sunbow Farm, said the measure applies only to organisms that would enter the local food stream.

"What they've done is take out of context a line (in the ballot measure text) that says no GMOs are allowed in Benton County," MacCormack said.

MacCormack, who worked 31 years at OSU's English and theater departments, said the measure must be interpreted by the intent of its ballot title. "All this covers is GMOs that would interfere in the local food system," he said.

He said Mehlenbacher, for example, could work with genetically engineered organisms in the lab, and use them to speed up breeding non-GMO hazelnuts with traditional methods. Beckman's and other medical research using genetically engineered organisms could continue, he said.

The Oregon Legislature in 2013 passed a law that prohibits local jurisdictions from banning GMOs on their own. MacCormack and other backers of Measure 2-89 say a local food system ordinance would preempt the state law; others sharply disagree with that legal interpretation.

According to the voters' pamphlet, the measure would establish a local food system right and a "right to seed heritage," which would protect seeds from infection, infestation or drift from genetically engineered organisms. "Natural communities" such as soil, plants and water systems would be named as plaintiffs in any legal action brought to enforce the right of natural communities to be free of GE organisms. Natural communities would have a legal right to be free from the patenting, licensing or ownership of their genes.

'As of now, we're kind of depending on this water rights system'

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Instead, agencies will rely on a bevy of grants and education campaigns to encourage growers to keep moving to more drought-tolerant methods, the officials said.

"We really think the decision of which crop to grow is an individual decision that the grower makes based on a whole variety of reasons," said Peter Brostrom, water use efficiency manager for the state Department of Water Resources. "We're not trying to intrude into that area. We don't see that as the role of the state to tell people what to grow."

Likewise, the State Water Resources Control Board and California Department of Food and Agriculture aren't considering imposing more stringent water-saving requirements on farms, their spokesperson said.

"I know we encourage" less water-intensive crops and irrigation systems, water board spokesman Tim Moran said. "As of now, we're kind of depending on this water rights system."

Environmental groups have long argued that the Sacramento-San Joaquin River Delta is being destroyed by pumping to provide water for unsustainable orchard crops. Barbara Barrigan-Parilla, executive director of Restore the Delta, said Brown's order "is sacrifice for 98 percent of Californians ... for the top 1 percent of water and land barons on the west side of the San Joaquin Valley."

But valley growers' groups counter that fisheries preservation efforts over the last 20 years had already caused their annual water allotments to be slashed before the drought left many farms with little or no surface water whatsoever.

Administration officials have steadfastly defended farmers since the Brown order, noting that growers provide most of the nation's fruits and vegetables and aren't using water frivolously.

"Over time, there have been great strides made in efficiency within the agricultural community," state Food and Agriculture secretary Karen Ross

said last week.

Among the various grant programs used by growers is the State Water Efficiency and Enhancement Program, in which the CDFA has provided some \$9.4 million for more than 160 on-farm projects to improve irrigation systems. Ross said the program has saved about 317,000 acre-feet of water.

"We know that as we continue to make these kinds of investments, (farmers will) continue to provide food crops that are only grown in California," she told reporters in a conference call.

Over the past 10 years, state agencies have given out about \$40 million to agricultural water suppliers to make improvements in irrigation systems, Brostrom said. Last year, the state distributed \$10 million in cap-and-trade receipts to growers to invest in improved irrigation systems, and there will be another \$10 million this year, he said.

In addition, the \$7.5 billion water bond passed by voters in November

will provide \$100 million for water-use efficiency projects on farms and in urban areas. And the University of California Cooperative Extension has made irrigation efficiency a key focus in recent years, training farmers in irrigation scheduling, deficit irrigation and how to interpret readings from pressure bombs to determine how much water their trees need.

For certain crops, requiring such systems as drip irrigation wouldn't be practical, Brostrom said. For instance, while rice farms are known for their flooded fields, their actual consumption of water is comparable to other crops, he said.

Jeanine Jones, the DWR's interstate resources manager and deputy drought manager, has said increasing vulnerability of water supplies could prompt some growers to voluntarily change what they plant. But state officials say they can trust farmers to make that choice.

"They will look at their water supply and make the best decisions possible," Brostrom said.