

OUR VIEW

# When EPA pollutes, usual voices remain silent

Imagine the poor dairy farmer who accidentally breaches his manure lagoon, sending its contents down the nearby creek. Environmentalists would want his head on a platter, and state and federal agencies would land on him with both feet with fines and potential criminal prosecution. If it were bad enough, and politically advantageous, there might be comment from the White House.

But what happens when the polluter is the Environmental Protection Agency?

Last week EPA contractors working to stabilize an abandoned gold mine in Southern Colorado caused 3



Jerry McBride/The Durango Herald via AP

People kayak in the Animas River near Durango, Colo., on Aug. 6 in water colored from a mine waste spill. The U.S. Environmental Protection Agency said that a cleanup team was working with heavy equipment to secure an entrance to the Gold King Mine. Workers instead released an estimated 3 million gallons of mine waste into Cement Creek, which flows into the Animas River.

million gallons of mine water contaminated with lead, arsenic, cadmium, aluminum, copper and calcium to flow into the Animas River 60 miles north of Durango.

A mustard-yellow plume has now made its way into New Mexico. The previously pristine river, a huge draw for the tourists who are the lifeblood of the region’s economy, has been closed to fishing, rafting and kayaking. Irrigation pumps have been shut down. The long-term impact of the disaster is unknown.

For its part, the EPA has taken blame and has promised to clean up the mess.

Outside local outrage — which has been considerable — the reaction from national environmental groups and the political class that usually capitalizes on such events

has been muted. No cries for an investigation, no calls for resignations or prosecutions. The White House, which seldom lets a local crisis it can blame on its critics go unnoticed, has been surprisingly silent.

Accidents, after all, happen. As we say, the locals are a bit more outspoken.

“If a mining operator or other private business caused the spill to occur, the EPA would be all over them,” U.S. Rep. Scott Tipton, R-Cortez, said in a statement. “The EPA admits fault, and as such must be accountable and held to the same standard.”

Sauce for the goose.



Rik Dalvit/For the Capital Press

OUR VIEW

# Idaho’s ‘ag gag’ law: Now what?

While we fully sympathize with the Idaho legislators who wrote the Ag Security Act, and we completely support efforts to keep unauthorized and unwanted animal activists off farms, we have to say that we saw Federal Judge Lynn Winnill’s decision coming.

He ruled last week that Idaho’s so-called “ag gag” law was unconstitutional. Specifically, he said it violated the First Amendment protecting free speech and the Equal Protection Clause of the U.S. Constitution.

In his ruling, Winnill recounted the story of writer Upton Sinclair. “Sinclair, in order to gather material for his novel, ‘The Jungle,’ misrepresented his identity so he could get a job at a meat-packing plant in Chicago,” Winnill wrote. The novel described working conditions and unsanitary practices in early 20th century packing houses and sparked a national uproar that resulted in the passage of the Federal Meat Inspection Act and the Pure

Food and Drug Act.

“Today, however, Upton Sinclair’s conduct would expose him to criminal prosecution under” Idaho’s law, the judge wrote.

Idaho’s law, which legislators passed in 2014, made it a crime to make undercover recordings or gain employment under false pretenses at a farm. It was passed after an activist took a video showing cows being mistreated at an Idaho dairy. The video was posted online, resulting in death threats against the farmer from some members of the public.

While the law runs afoul of the Constitution, farmers really don’t need it if they follow a few steps and the legislature beefs up the state’s trespassing laws.

First, farmers need to tell every employee that mistreatment of animals is not allowed. Any employee must report mistreatment to a supervisor immediately. Anyone not doing that will be fired. Anyone mistreating an animal will be fired and reported to the authorities.

Second, all employees must be thoroughly screened, including background checks. Between animal activists and the requirement that all employees be in the U.S. legally, the days of hiring based on a handshake are long gone. Farmers need to make sure all the legal requirements placed on employers are met. Not coincidentally, this will also cull out undercover activists.

Third, employees must be monitored. No longer can a farmer leave employees on their own. That’s another unfortunate development of farming in the 21st century.

The vast majority of farms already follow some or all of these protocols. The rest should, or risk being caught up in a nightmare of online video accusations.

In the meantime, legislators can revisit the state’s trespassing laws to make sure that anyone who gets himself hired by lying can be prosecuted.

These few steps can assure that farmers avoid future attacks from animal activists.

# Corps gives plaintiffs a hand on WOTUS

Plaintiffs who have filed suit to block the implementation of new rules from the Environmental Protection Agency and the Corps of Engineers defining “waters of the United States” that can be regulated under the Clean Water Act got a big boost last week.

And it looks as though they can thank the EPA.

EPA and the Corps have been working on the rule for a couple of years now in the hopes of reconciling two separate Supreme Court decisions on cases involving the Clean Water Act.

Since the beginning, farm and ranch groups have said the new rule would expand the EPA’s authority to cover every thing up to and including muddy hoof prints.

So they and the attorneys general of several states have filed separate lawsuits to stop the implementation of the recently released draft rule.

Turns out the Army Corps of Engineers doesn’t think much of the rule, either, at least the way the EPA wrote it. In memos written by the Corps to the EPA before the rule was released, the Corps alleges:

- That in writing the rule the EPA ignored sound science, and ignored the Corps’ input to such an extent that it doesn’t consider the rule the collaboration the published draft claims to be.
- That the rule removes Clean Water Act protection from some bodies of water

where it is now enforced. That’s because the rule limits coverage to lakes, ponds and other waterways that are within 4,000 feet of a navigable water or tributary. The Corps says there’s no scientific basis for the limit, and no legal authority for the agencies to abandon its current jurisdiction.

- That because the EPA acknowledged that abandoning jurisdiction could create “significant adverse effects on the human environment,” the National Environmental Policy Act requires the Corps to perform an Environmental Impact Statement.
- That while the rule envisions the agencies extending regulation to isolated bodies of water that have a “significant nexus” with navigable waters of the United States, the definitions of such bodies as having “no hydrological connection with navigable waters” makes it unlikely the agencies will be able to establish a nexus that will withstand a court challenge.

The Corps, it seems, has found that the EPA doesn’t listen to anyone and does whatever it wants. What a surprise.

It will take awhile for all this to play out in the courts, and it’s unclear what impact the Corps’ memos will have on the cases.

But it can only be a good thing for plaintiffs when one of the defendants makes their case.

# It’s time for the Senate to act on wildfire prevention bill

By GREG WALDEN  
For the Capital Press

Guest  
comment  
Greg Walden



Around Oregon and throughout the West, another fire season is well underway. Overstocked, diseased, and bug-infested forests are at risk of the massive and catastrophic wildfires that clog our air with smoke and threaten our streams. All the while our mills are starving for a reliable supply of timber and people need jobs. It’s clear the status quo isn’t working for our forests, our communities, or our environment. We can do better.

The U.S. House has passed a bipartisan bill — the Resilient Federal Forests Act — that would help reduce the threat of catastrophic wildfires and bring

active management back to our federal forests. Through active management, we can clean up our forests, prevent these unnaturally large fires, protect our air, and put people back to work in our forested communities.

Our bill puts into place much needed reforms to federal forest policy. For example, the bill repeals the arbitrary and outdated prohibition on harvesting trees over 21 inches in diameter on national forests in eastern Oregon. “Temporarily” put in place in 1997, this rule still hasn’t been

removed nearly 20 years later! This flawed, one-size-fits-all rule illustrates just how broken federal forest management has become. The restriction greatly limits forest managers’ ability to address site specific needs of the forest on the ground and has only served to further tie up projects in endless appeals and litigation.

Our plan also gives the Forest Service greater flexibility to move quickly on projects to reduce the threat of fire around our rural communities, streamlining projects developed through local counties’ community wildfire protection plans.

Right now, after a fire, the Forest Service is able to reforest less than 3 percent of areas burned. This plan would accel-

erate the removal of timber after a fire (to help pay for replanting), and requires a large percent of the area impacted be reforested within five years. Just like we do after other natural disasters, we ought to clean up and rebuild after wildfires.

As we saw earlier this summer on the Buckskin Fire in southern Oregon, failing to clean up only leads to future fires in old burn scars full of fallen trees and snag that prove difficult and too dangerous for firefighters.

This bill also cuts costs and streamlines rules for timber production on legislation pertaining to Oregon’s unique O&C Lands. The Bureau of Land Management recently unveiled new management plans for these lands

that would fall short of the needs of local communities for a reliable supply of timber to fund essential local services like schools, roads, and law enforcement. The bill tells the BLM to go back to the drawing board, and propose new plans to actually provide sustainable timber production for Oregon’s rural communities as required by law.

Finally, the endless cycle of “fire borrowing” — forcing the federal government to use wildfire prevention funds to pay for fighting fire — is ended under this bill. It fixes how we pay to fight fire by allowing the Forest Service to apply for FEMA disaster funds to pay for firefighting. This treats wildfire as the natural disasters they are, similar to hurricanes or tornadoes.

The Resilient Federal Forests Act will improve the health of our forests and our rural economies. During the last session of Congress, the House twice passed bipartisan legislation I worked on to reform federal forest policy. The Senate failed to take up forestry legislation. However, with new leadership in that body I’m hopeful that the Senate will take meaningful action on forestry legislation.

We cannot let this opportunity pass us by again. Our forested communities have already waited too long. Now is the time to act.

*U.S. Rep. Greg Walden represents Oregon’s Second Congressional District, which covers 20 counties in southern, central, and eastern Oregon.*