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# Opinion

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## OUR VIEW

# Research needed on CAFO rule assumptions

It's time for the Washington State Department of Ecology to do its homework on dairy lagoons.

The department recently offered a "tentative draft" of new regulations for dairy farms and how they handle manure.

The regulations' authors jumped to the conclusion that all dairy manure lagoons leak and, because of that, cause water quality problems. That in turn meant all dairies would have to get confined animal feeding operation permits.

The department has since backed away from that stance, instead saying that while lagoons leak not all of them pollute groundwater.

The problem with lagoon leaks is that excessive amounts of nitrates can potentially get into groundwater or streams.

While it's an interesting theory that all lagoons leak, the facts do not seem to bear it out. Or rather, the state has not done the research to determine whether it is true.

A legal battle in Yakima County, Wash., has provided at least some of the impetus for the new regulations. In that case the over application of manure on some fields appeared to be the primary problem, according to the judge in the case. Whether all of the lagoons leaked groundwater was apparently not determined.

Nevertheless, one of the dairies

in that case, the Cow Palace, agreed to double-line its lagoons and install alarms in an effort to prevent any leakage and satisfy the plaintiffs.

Installing liners is expensive. A Washington State University researcher estimated the cost of lining a lagoon at about \$639 a cow. That means a dairy with 1,000 cows could expect to pay \$639,000 to line a lagoon that may or may not leak.

Worse yet, federal Natural Resources Conservation Service experts warn that such liners can be worn or torn and result in manure releases.

In northwestern Washington, where many of the state's 425 dairies are, farmers worry that the state and Indian tribes will insist

on double-lining lagoons or taking other steps to prevent fecal coliform bacteria from entering the Nooksack River and reaching shellfish beds downstream.

Again, the problem is that Ecology has not done the research to determine whether the problems are caused by development upstream in Canada or by the farms.

Ecology's assumption that all lagoons cause problems needs to be researched. Many dairies have installed clay-lined lagoons at great cost to contain the manure that cattle produce. NRCS and King County, Wash., officials have commented that clay-lined lagoons are effective means of handling manure.

While some lagoons may leak, the state cannot automatically assume that all do.

"Such unproven assumptions could lead to expensive fixes or retrofits for dairies that may be neither necessary nor effective," a King County official wrote to Ecology.

A lot is at stake. Washington dairies produce \$1.6 billion in milk each year, making it the state's second-largest commodity after apples.

We urge the Department of Ecology to do the research to determine the failure rate of lagoons, and to write rules that address that situation instead of making broad-brush assumptions.

## OUR VIEW

# Supreme Court must give landowners right to challenge Corps

The U.S. Supreme Court has agreed to take a case that will determine whether landowners can challenge in court a regulatory determination that their properties are subject to the Clean Water Act.

The government contends, and is backed by the 9th and 5th U.S. Circuit Courts of Appeal, that a regulatory determination by the Corps of Engineers that a property is subject to Clean Water Act restrictions is merely advisory in nature, and is not a final agency decision subject to litigation.

The 8th Circuit reached the opposite conclusion last year, setting up a clear conflict to be settled by the Supreme Court.

For farmers, ranchers and other landowners, the stakes are high. Regulatory requirements and restrictions under the act are expensive and can severely limit the owner's property rights. Property owners should have the right to challenge a jurisdictional determination.

The government says landowners who disagree with a jurisdictional determination can go ahead with a planned project without a permit and then fight the determination when the government brings an enforcement action.

Or, the landowner can apply for the necessary permits. If the permit is denied or the landowner disagrees with the government's findings, the landowner can file suit.

Neither of these are practical options.



Rik Dalvit/For the Capital Press

A landowner would be foolish to expend capital and proceed without a permit if the Corps of Engineers has determined jurisdiction, whether that ruling is a final determination or merely advisory.

Having determined a landowner needs a permit, by whatever means, the Corps will certainly follow with an enforcement action if a landowner proceeds. Win or lose, the landowner will be saddled with the expense of defending his action. And should he lose, the government can pile on ruinous fines and penalties, and perhaps criminal charges.

Should the landowner acquiesce to the Corps' determination, he submits to a costly, time-consuming process. If the permit is denied, or there is an issue with the terms,

the litigating landowner walks into court having already conceded that the Corps has jurisdiction.

The Corps may consider its determinations advisory in nature, but the same can be said of a rattlesnake shaking its tail. Either are ignored only at great peril.

The rattlesnake's warning can be appreciated for its honesty, while the Corps' is veiled by semantics. Having been warned, the landowner will certainly feel the sting of the Corps' strike.

The Corps' determinations are final by any standard of common sense. As such, they should be allowed to be challenged in court without the landowner first being placed in legal or financial jeopardy.

We are confident the high court will agree.

# Christmas trees, the focal point of holiday traditions

By ROBERT GIBLIN  
For the Capital Press

**Guest comment**  
Robert Giblin



O Tannenbaum, O Tannenbaum, Wie treu sind deine Blätter! Oh Christmas tree, Oh Christmas tree, thy leaves are so unchanging.

Christmas trees have become the traditional focal point of holiday traditions, and they are an important part of American agriculture. They're grown in every state, planted on more than 350,000 acres, on 15,000 farms. More than 77 million are planted each year, at 2,000 trees per acre, and they normally take 6-8 years to mature. Normally, three seedlings are planted for every tree harvested. The industry employs more than 100,000 people.

Christmas trees transcend religion and culture. As a child, "White Christmas" composer Irving Berlin used to leave his Orthodox Jewish household on Christmas Eve to gawk at his neighbor's Christmas tree and take part in their festivities. Today, many community and business trees are often called holiday trees to be inclusive of the whole season.

Christmas trees are a sensory experience that begins with the hunt for the "perfect" tree. For some the search begins the day after Thanksgiving, while others wait until Christmas Eve. About 25 to 36 million real Christmas trees, more than \$1 billion worth, are sold each year through more than 13 million outlets.

The closest many urban dwellers come to a tree farm is likely a vacant lot or parking lot, with trees sold by a business or, in many cases, local churches or civic and charitable organizations.

Some may venture to an actual tree farm, sometimes trudging through snow for hours, to find the right tree.

The lucky few still go by foot, truck or horse and wagon to woodlands on the farm, or hike their own version of Walton's Mountain. It is a rite of passage for a youngster to be handed the bow saw to cut a tree for the first time.

Once that perfect tree comes home, the smell of fresh-cut fir or pine fills the house. Ornaments are unpacked — heirlooms and mementos collected over the years. Although sometimes preceded by tip-overs and mishaps, the twinkling eyes and the look of wonderment at the moment the

lights are plugged in on the fully adorned tree is second only to the excitement of children racing to find their new treasures under it on Christmas morning.

The experience doesn't always end with the holiday season. Many communities and neighborhoods host Christmas tree bonfires. Despite months of vacuuming or sweeping, old Christmas tree needles have a way of hiding, before being rediscovered by a sharp pierce when walking in stocking feet, or sitting on the carpet.

For a while, America started to lose interest in real Christmas trees. Artificial trees of various types have been around for hundreds of years. The first modern "artificial brush" tree was invented by the Addison Brush Co. in the 1930s, using the same technology and materials it used to make toilet brushes. The aluminum tree was patented in the 1950s and sales exploded until the mid-1960s.

Then in 1965, Coca-Cola commissioned what is now the country's second-longest running Christmas TV special.

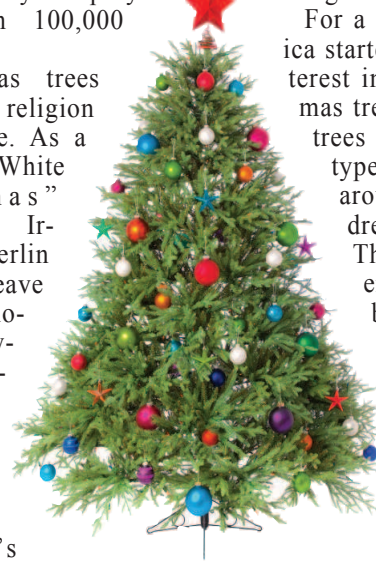
This December marks the 50th anniversary of "A Charlie Brown Christmas," based loosely on Hans Christian Andersen's "The Fir Tree."

In the story, Charlie Brown rejects Lucy's demand to buy a pink aluminum tree and instead chooses a small, ugly live tree to protest the commercialization of Christmas. Thanks in part to Coca-Cola and Charles Schulz, interest in real Christmas trees was rekindled.

Real Christmas trees still outsell artificial trees by two or three to one, and for good reason. They fit modern consumer purchasing trends — they're sustainable, recyclable and biodegradable.

Of course, most people don't think about those things. They think of the sight, smell, ritual, traditions and memories, as they delight in reliving the tradition every year.

Merry Christmas!  
*Robert Giblin writes, speaks and consults about agricultural and food industry issues, policies and trends. This column appears courtesy of the American Farm Bureau Federation.*



# Wolves: West Coast senators side with Easterners

While members of Congress were decorating the \$1.1 trillion Christmas tree bill they passed last week in Washington, D.C., another development occurred that should make Westerners scratch their heads.

Rep. Collin Peterson, a Democratic member of the House from Minnesota and former chairman of the House Agriculture Committee, was working with Rep. Reid Ribble, a Wisconsin Republican, to get the gray wolf taken off the endangered species list in the Western Great Lakes region and Wyoming. Some 2,200 wolves live in Minnesota, and Peterson reasoned that it was time to let the state manage the predators. In all, 3,700 wolves roam the region, an adequate number by any measure.

The thought of Minnesota, Wisconsin and other states taking over management of the wolves sent 28 senators into a tizzy. They penned a letter to President Barack Obama urging him to reject any riders in any spending bill that would delist any endangered species.

Among those who signed the letter were Sens. Maria Cantwell and Patty

Murray of Washington; Sens. Jeff Merkley and Ron Wyden of Oregon and Sens. Barbara Boxer and Dianne Feinstein of California.

The West Coast delegation was joined by Democratic presidential candidate Bernie Sanders of Vermont, New York Sens. Charles Schumer and Kirsten Gillibrand, New Jersey Sens. Cory Booker and Robert Menendez and Massachusetts Sens. Elizabeth Warren and Ed Markey. All are Democrats.

While the intent of the letter was to keep Great Lakes wolves on the endangered species list — though they are clearly no longer endangered — the message to Westerners was that their senators are more concerned with East Coast sensitivities than the needs of Midwesterners and Westerners — and that state wildlife managers should not be allowed to manage wolves until they are cheek to jowl.

By this way of thinking, wolves would probably still be listed as endangered in Idaho and Eastern Oregon and Washington, parts of Utah and Montana. Congress in 2011 delisted wolves there to

provide needed relief for areas overrun by the predators.

While animal activists were happy to see the letter and called it a "pleasant surprise," Western ranchers and others need to ask their senators just what on earth they were thinking. Only when state wildlife managers have taken over management of wolves have any reasonable steps been taken to control wolves. By aligning themselves with East Coast interests and ignoring the perspective of their constituents, West Coast senators have demonstrated their lack of understanding of the issue and its impact on agriculture.

On the East Coast, wolves no doubt sound exciting and even romantic. Those emotions fade when an Oregon or Washington rancher finds the handiwork of a wolf — the disemboweled carcass of a cow or sheep that was torn apart while still alive.

We expect our elected representatives to stand up for Westerners in the U.S. Capitol, not for the East Coast elite. If they don't, maybe it's time for a change when the next election comes around.