

# Court strikes down Navigable Waters Protection Rule

By CAROL RYAN DUMAS  
Capital Press

A federal judge in Arizona on Monday vacated the Navigable Waters Protection Rule put in a place by the Trump administration in 2020.

The rule reined in the Obama administration's 2015 Waters of the U.S. rule, which greatly expanded federal jurisdiction under the Clean Water Act.

The Environmental Protection Agency and Army Corps of Engineers withdrew the 2015 WOTUS rule in 2019 and reinstated the pre-2015 regulations. In 2020, the agencies redefined the term "navigable waters" with the Navigable Waters Protection Rule, categorically excluding certain features from the definition including "ephemeral streams," or those that have flowing water only after a storm.

Plaintiffs representing Native American Tribes challenged the Navigable Waters Protection Rule and requested that it be vacated.

Plaintiffs including the Pascua Yaqui Tribe, Quinault Indian Nation, Fond du Lac Band of Lake Superior Chippewa, Menominee Indian Tribe of Wisconsin, Tohono O'odham Nation, and Bad River Band of Lake Superior Chippewa moved for summary judgment on May 11.

In lieu of filing a response

to the plaintiffs' motion for summary judgment, EPA and the Corps sought to voluntarily remand the Navigable Waters Protection Rule while they worked to revise or replace it and redefine waters of the U.S.

U.S. District Judge Rosemary Marquez granted the agencies' motion for voluntary remand but also granted plaintiffs' motion to vacate the rule.

"Remanding without vacatur would risk serious environmental harm," she said, noting the agencies have identified indicators of a substantial reduction in waters covered under the rule compared to previous rules and practices.

American Farm Bureau Federation said it is "extremely" disappointed in the ruling.

"Farmers finally had environmentally responsible regulations that brought clarity to clean water efforts," said Zippy Duvall, Farm Bureau president.

"This ruling casts uncertainty over farmers and ranchers across the country and threatens the progress they've made to responsibly manage water and natural resources," he said.

Three courts previously refused to dismantle the Navigable Waters Protection Rule, including last month when a federal court in South Carolina refused a

similar request from a group of plaintiffs, he said.

"Unfortunately, this Arizona court simply accepted the plaintiffs' assertions as true and did something that no other court has done in vacating the NWPR," he said.

Farm Bureau is reviewing the ruling to determine its next course of action, he said.

"Farmers and ranchers deserve consistency and a rule that is fair and doesn't require a team of attorneys to interpret," he said.

The National Cattlemen's Beef Association said the Navigable Waters Protection Rule corrected the disastrous 2015 Waters of the U.S. rule

and provided key protections to farmers and ranchers.

The rule limited federal overreach and provided regulatory certainty to cattle producers, said Scott Yager, NCBA chief environmental counsel.

"The NWPR was a solution to the far overreaching 2015 WOTUS rule, but yesterday's court decision adds further confusion to an issue that has been complicated by decades of activist-driven litigation," he said.

"NCBA is disappointed in this decision and will continue advocating for regulations that protect the ability of cattle producers to invest in their land and care for their cattle," he said.

## Washington to cull Togo wolf pack in Ferry County

By DON JENKINS  
Capital Press

The Washington Department of Fish and Wildlife said Aug. 26 it will try to kill one or two wolves in the Togo wolf pack, which has been attacking cattle on public and private land in Ferry County.

Fish and Wildlife Director Kelly Susewind authorized lethal removal because non-lethal deterrents used by three different ranchers have not stopped the pack from attacking cattle, according to the department.

Even if more non-lethal measures are added, the attacks are likely to continue, according to the department.

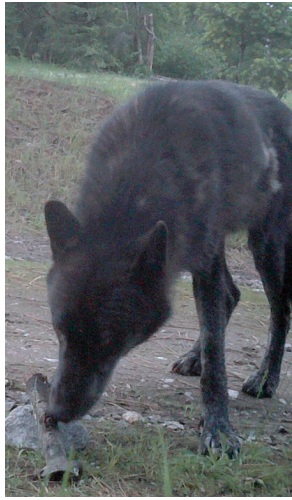
The Togo pack has a history of attacking livestock. Susewind has authorized lethal removal five times in the past four years. The department has removed one wolf.

The pack has five adults and four pups and again crossed the threshold this month for the department to consider lethal removal.

The department has documented four attacks on calves since June 24, including three within the past 30 days. One calf was euthanized because of its injuries.

Ranchers have revised their operations to prevent the attacks, a prerequisite to the department resorting to lethal control.

Non-lethal measures include having more people around the grazing cattle and delaying the release of cattle onto sum-



WDFW

**A wolf in the Togo pack in Ferry County in northeast Washington.**

mer grazing lands.

Livestock graze throughout much of the pack's territory, and the wolves have learned to attack them, factors in the department concluding the depredations will continue.

The department said it does not expect that removing one or more wolves in the Togo pack will harm overall wolf recovery in Washington, another prerequisite of lethal removal.

The department has documented three wolf deaths this year. In past years, 12 to 21 wolves have died, and the population continues to rise, according to the department.

The department has a self-imposed deadline of Sept. 26 for removing wolves. The deadline could be extended if there are more attacks on livestock.

## Wyden defends River Democracy Act in hour-long virtual town hall

By GEORGE PLAGEN  
Capital Press

HERMISTON, Ore. — Legislation that would add nearly 4,700 miles of wild and scenic rivers across Oregon would have no impact on private land or existing property rights, according to the bill's chief architect, Sen. Ron Wyden.

Wyden, an Oregon Democrat, introduced the River Democracy Act in February based on more than 15,000 public nominations from all corners of the state.

On Aug. 31, Wyden defended the bill during an hour-long virtual town hall. The legislation has faced opposition from rural counties over whether it would add new restrictions on grazing, timber harvest and recreational access.

Speaking from Hermiston in northeast Oregon, Wyden pledged the bill would not go forward without "loophole-free, airtight" protections for private property.

Rather, he said it applies only to federal lands and was written specifically not to interfere with existing property, grazing and water rights.

"Protecting existing rights was part of our effort to strike a balance," Wyden said.

If passed, the River Democracy Act would roughly triple the number of wild and scenic rivers in Oregon. The National Wild and Scenic Rivers System was established in 1968 to preserve rivers with outstanding natural, cultural and recreational values.

The bill also widens protective buffers from a quarter-mile to half-mile on both sides of designated streams, adding up to 3 million acres of protected land.

Earlier this year, the American Forest Resource Council, a regional timber trade association, conducted its own analysis of waterways nominated for inclusion in the bill. The group found that just 15% were actually labeled as "rivers," with



Nick Smith/AFRC

**Bear Gulch in Southern Oregon was nominated as a Wild and Scenic River under the River Democracy Act introduced by Sens. Ron Wyden and Jeff Merkley. Eastern Oregon counties oppose the bill.**

most being identified as streams, gulches, draws or unnamed tributaries.

The AFRC and other opponents have argued this is a misuse of the Wild and Scenic Rivers System — though Wyden countered that intermittent streams are not only valid for protection under the law, but necessary for watersheds.

"I've come to think that there's almost a transportation analogy here that's appropriate," Wyden said. "You don't manage traffic just by building highways. You need connecting streets, alleyways and sidewalks. The same, in fact, applies to most river systems."

Approximately 2 million Oregonians, or nearly half the state's total population, depend on intermittent streams for clean drinking water, Wyden added.

The bill also requires the U.S. Forest Service and Bureau of Land Management to assess wildfire risks in each wild and scenic river corridor. The agencies would then have up to six years to develop mitigation plans, working with local, state and tribal governments.

The bill would create a \$30 million per year fund to restore and rehabilitate riparian areas that do burn in a wildfire, Wyden said.

Supporters of the bill did speak during the virtual town hall, including representatives of the Nez Perce Tribe and Confederated Tribes of the Umatilla Indian Reservation.

Kat Brigham, CTUIR chair, said she is pleased with the River Democracy Act, and that it reinforces stream restoration already undertaken by the tribes.

"It moves us closer to what we are working toward — building, protecting and enhancing cold, clean water, not only for our first foods, but for ourselves," Brigham said.

Others, however, say their questions remain unanswered.

In a memo released shortly after the meeting, the AFRC pushed back against the bill, arguing wild and scenic designations would impose restrictions on forest management and actually increase wildfire risk in the protected stream corridors.

The bill would also "dramatically increase management costs and complexity on-the-ground, create conflicts between user groups, and distract and overload federal agencies already overwhelmed by catastrophic wildfire management and response," the memo states.

## Oregon Court of Appeals upholds denial of landfill expansion

By MATEUSZ PERKOWSKI  
Capital Press

The Oregon Court of Appeals has upheld Yamhill County's decision to deny a controversial landfill expansion that neighboring farmers claimed would disrupt local agriculture.

The county refused to allow the Riverbend Landfill to increase its footprint by 29 acres last year, citing concerns about litter, pests and water quality impacts on surrounding growers.

A legal challenge by Waste Management, the landfill's owner, has now been rejected by the appellate court, which agreed with the state's Land Use Board of Appeals that the county followed the law in denying the application.

The issue before the Court of Appeals was narrow: Whether the county should have explained in detail why it rejected a floodplain development permit along with its denial of the overall site design.

When the county rejected the overall project, "further consideration" of the floodplain development permit "was rendered unnecessary," the Court of Appeals said.

The earlier decision by LUBA more broadly determined that Yamhill County had sufficiently explained

why the landfill's farm impacts could not be "mitigated to an insignificant level" by the operator.

For example, Waste Management argued the county should have better explained why small amounts of plastic litter would force impermissible changes to nearby hay production.

However, LUBA found the local government's reasoning to be "more than adequate."

Waste Management announced it would stop accepting public garbage and recycling this summer, even before the appellate court's decision. However, the facility will still bring in contaminated soil and

solid waste to prepare its slopes for final cover.

The landfill opened about four decades ago but the owners approached the county about expanding it in 2009.

The local government's approval of the proposal was subject to prolonged litigation, with the state's Supreme Court issuing a

landmark decision in 2019 overturning the county's permit.

The ruling established the legal precedent that adverse agri-

cultural impacts must be reviewed "practice by practice and farm by farm" and cannot simply be compensated with cash.

### QUIT PAYING TOO MUCH FOR LIVESTOCK FEED

**START SAVING TODAY BY PICKING UP THE NORTHWEST'S BEST VALUE LIVESTOCK FEED AT:**

Coastal Farm & Ranch   Wilco   CASCADE FARM & OUTDOOR

**NOTHIN' FANCY. JUST GOOD. SOLID. FEED.**

cascadefeed.com

**NORTHWEST AGRICULTURAL SHOW**

PRESENTED BY HARVEST CAPITAL COMPANY

**Mark Your Calendars!**

Join us at the fairgrounds for a good ol' fashioned Farm Show.

January 12-14, 2022  
Oregon State Fair & Exposition Center - Salem

- 3 days • 2 buildings • 120+ Exhibitors
- Seminars • Earn OSHA Safety Credits

**ATTN: EXHIBITORS**

**RESERVE YOUR BOOTH SPACE BY Nov. 1<sup>st</sup>**

Call us @ 800-882-6789 or  
Email: events@eomediagroup.com