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Opinion

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Our View

Write a plain-language WOTUS rule

The Environmental Protection Agency's Farm, Ranch and Rural Communities Advisory Committee last week submitted a list of recommendations to administrator Michael Regan on the intended revision of the definition of "Waters of the United States."

They are full of so much common sense that we don't see how they can possibly be adopted by an agency of the federal government.

At issue is which bodies of water can be regulated by the federal government under the Clean Water Act. The act gives the feds jurisdiction over navigable waters of the United States. Conflicting Supreme Court interpretations over the act's meaning and intent rendered the precedents unworkable, and new rules were necessary to make jurisdiction clear.

In 2015 the Obama administration extended regulation to isolated bodies of water having a "significant nexus" with navigable waters of the United States. The rule left it to the bureaucrats to determine that nexus, and that made farmers and ranchers nervous.

President Trump suspended the rule. The Biden administration re-established the pre-Obama definition of WOTUS as it consults a broad "array of stakeholders" to rewrite the rules.

The committee submitted four recommendations:

• Adhere to Clean Water Act and relevant Supreme Court precedent in cases that reinforce Congress-placed limits on the scope of federal jurisdiction under the act by using the term "navigable."

Any definition of WOTUS should be limited to traditional navigable waters and territorial seas. Jurisdiction over non-navigable tributaries should be limited to tributaries containing clearly discernible physical features, as well as consistent flow into traditionally navigable waters.

• Define WOTUS using clear terms that are easy to interpret and apply. The most important aspect of any definition of WOTUS is it must be easily interpreted by farmers, ranchers and leaders of rural communities and interpreted with clear lines of jurisdiction. It is necessary that a new WOTUS rule avoid vague terminology that both landowners and regulators cannot apply without engaging in burdensome analyses.

• Define jurisdictional features with an eye toward allowing farmers, ranchers and rural communities the necessary flexibility to implement innovative environmentally beneficial projects that do not adversely impact the function or water quality of WOTUS.

• Retain exclusions that are critical to farmers, ranchers and rural communities and recognized regional differences. The most important exclusions are prior-converted cropland, groundwater, farm ditches, road ditches, canals, ponds, playas, stock ponds, prairie potholes and other isolated features.

In addition, storm water detention, tail water recovery or other environmentally beneficial practices should not be considered WOTUS. Wastewater, reclaimed water or recycled water systems should not be considered WOTUS.

A clear and consistent definition of WOTUS, in plain language, that any farmer or rancher could understand would keep farmers out of trouble.

But, that's not the kind of language favored by the regulators. They prefer vague rules that allow them to easily expand their authority and find violations.

We hope these recommendations are included in the final rule.

Our View

Don Jenkins/Capital Press

The Chehalis River flows past farmland in southwest Washington. Gov. Jay Inslee has proposed mandatory buffers along waterways statewide.

Washington buffer bill has too many shortcomings

Washington state has for years had the Voluntary Stewardship Program, which is aimed at improving salmon habitat along rivers and streams. Under the VSP, farmers, ranchers and other landowners opted to participate by planting riparian areas to help the fish.

By all lights, it was a success. Its only shortcoming was the legislature has occasionally underfunded it, or not funded it at all.

But now legislators are considering killing the Voluntary Stewardship Program and replacing it with mandatory legislation that could damage many of the state's farmers and ranchers and leaves many questions, including the cost, unanswered.

Gov. Jay Inslee is pushing the legislation, House Bill 1838. It would toss out the voluntary program and replace it with a mandate to create buffer zones along any salmon stream in the state. According to the bill, the width of the zones would be "site potential tree height."

In other words, the buffers would be as wide as the state Department of Fish and Wildlife says they should be.

That's not much comfort for a farmer, rancher or other landowner who is unfortunate enough to be caught up in this legislation.

It should be noted that while farmers and other landowners would be mandated to plant riparian buffer zones, cities such as Seattle and tribes would be exempted from the bill, unless they opt in.

Instead of working with landowners to identify key riparian habitat, the bill would include all watersheds in a map dictating where riparian zones are and how wide the buffers would be.

If a farmer owns land identified as a riparian zone, the state would pay for only a portion of the cost of planting trees and a portion of the lost value of the land. No mention is made of the crop production that would be lost forever.

That's known as a taking. Landowners should be fully indemnified for the lost value and production of their land.

Farmers failing to comply with this new mandate would be subject to a fine of $10,000 a day.

This has farmers worried, and it should worry legislators as well.

Washington State Dairy Federation policy director Jay Gordon estimated that, if the bill were enacted into law, it would take away his right to farm 480 acres.

That's just one farm. Multiply that by thousands of farms that would be impacted, and the state would be on the hook for an inestimable amount. Since the legislation doesn't specify how wide the buffers would be, it is impossible to calculate the cost to the state, or to farmers and ranchers.

Inslee and his staff put together the legislation in cooperation with members of Washington's tribes. Inexplicably, they did not include the state's farmers, ranchers and other private landowners in their discussions.

We have a suggestion. Legislators should talk with farmers, ranchers, tribes and others and take a close look at the Voluntary Stewardship Program, which has been so successful, and identify any areas where it might be improved.

There is nothing wrong with taking a good program and making it better. Adequately funding it would be a step in the right direction.

Then they can take House Bill 1838 and toss it in the recycling bin.

How River Democracy Act threatens E. Oregon

GUEST VIEW

Rep. Cliff Bentz

Editor's Note: Rep. Cliff Bentz spoke on the floor of the U.S. House on Jan. 12 in opposition to the River Democracy Act, which is sponsored by Sen. Ron Wyden, D-Ore. These are his remarks.

I rise today in opposition to S. 192, the so called "River Democracy Act."

This bill, contrary to what the title implies, has nothing to do with democracy. Instead, it would, if passed, label some 4,700 miles of Oregon rivers, creeks, and streams as "Wild and Scenic" (a more appropriate phrase would be: "just waiting to be burned and ruined.")

However, this is not your typical Wild and Scenic River bill. This bill would designate a mile-wide corridor running the length of every inch of those 4,700 miles of waterways as "wild and scenic." This mile is double the half-mile- wide corridor normal for such designations.

This means that, under this act, 4,700 square miles, an area about the size of Connecticut, would be locked up and left to the high probability of burning up.

Many of the miles of streams, creeks and gullies to which this bill would apply are within the 20 counties making up my district. Many of those miles run through Oregon's most important watersheds, which are absolutely essential to life in my communities, particularly in times of drought.

Given the damaging impact of designations to activities necessary to protect these streams, it's no wonder that this bill is deeply unpopular — something that has been made crystal clear to me by the overwhelming majority of my 62 county commissioners. They have serious and unanswered concerns about the dangers the act presents.

Chief among them is that this designation will prevent what needs to be done to protect these watersheds — placing them in a bureaucratic wasteland where it will take years, if not decades, to initiate and then complete plans that may or may not allow the treatment activities needed right now.

Also, a top-down approach to land management is wrong because it completely ignores the interests of the well-informed local people, businesses and stakeholders.

The approach the bill's sponsors used in developing this bill was seriously flawed because river and stream nominations were solicited from various groups and the general public without any clear legal or scientific analysis to identify those rivers, streams and creeks that would qualify as scenic. If a scientific or legal analysis exists, the sponsors should share it.

Additionally, the public deserves to know which special interest groups crafted the bill, provided the unofficial maps of the streams affected, and conducted the outreach to the public.

It is absolutely clear, whatever the process was, that local stakeholders, elected officials, county commissioners, landowners and users and experts should have been consulted and they were not.

Let me explain why so many, who truly want to protect our public lands, are so outraged by this bill.

So far last year, over half a million acres of forests and other lands have burned up in my district. The year before, it was even worse, with over 1 million acres laid to waste.

Inexplicably, the bill focuses upon only one method of protecting this 4,700 square mile area from fire, and that is by "prescribed burns."

I cannot emphasize enough how dangerous it is to use prescribed burns in overgrown, densely packed, dry forests without thinning the forest first. Prescribed burning (before thinning) puts at extreme risk the very rivers and watersheds the designation is supposed to protect! It is like dropping a match in a tinderbox. It is impossible to contain these types of fires once they start.

The River Democracy Act, if passed, would threaten watersheds, homes, businesses, farms, ranches, livestock and, most importantly, human lives.

The bill contains provisions throughout it that leave the door wide open for frivolous litigation by far-left special interest groups, who have profited for years from lucrative sue-and-settle tactics.

The bill contains no explicit protections for the current multiple uses of the land, including: sustainable timber harvests, hunting, grazing, fishing and mining.

Regardless of legislative intent, the applicable agencies will have broad authority to restrict these activities.

To date, no official maps have been provided. Oregonians need to have access to clear, official maps to see just how much land is affected by this bill. I believe no further action should be taken with regard to this bill until the questions I have raised today and necessary maps are made available to the public so that Oregonians know exactly what this bill would do.

Cliff Bentz, a Republican, represents eastern Oregon in the U.S. House of Representatives.