

WATERWAYS

A Quarterly Publication of the Iowa Drainage District Association

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State argues before Iowa Supreme Court for dismissal of Raccoon River pollution suit

Attorneys debated before the Iowa Supreme Court in December a move by the state to dismiss a lawsuit by two environmental groups contending it has failed to do enough to curb pollution flowing into the Raccoon River from farms and livestock operations.

Iowa Citizens for Community Improvement and Food & Water Watch sued state agencies, boards and officials last year, arguing they had abdicated their responsibility to protect residents' right to clean water, under the public trust doctrine.

The groups claim the state has allowed rapid expansion of hog farms and placed few restrictions on pollution from agricultural operations, allowing bacteria, nitrates and phosphorous from manure and fertilizer to run off into the Raccoon River.

The Raccoon River is the primary source of drinking water for 500,000 Des Moines and central Iowa residents.

The state seeks to have the lawsuit dismissed, saying the environmental groups want the court to intervene in an issue that's a "political question," and that the environmental groups lack standing to pursue the lawsuit, among other considerations.

"Agriculture is the bedrock of who we are and what we are as a state, historically, culturally and economically," said Iowa Solicitor General Jeffrey Thompson, representing the state. "The regulation of agriculture is one of the most important and also one of the most difficult challenges faced by the state."

The state is appealing a district court decision last year that the environmental group's lawsuit could proceed.

Brent Newell, attorney representing the environmental groups, said the public trust doctrine is not limited to

protecting recreational uses such as fishing or boating. Courts, he said, have found its definition is "broad and unbound."

"And that's what we're seeking really here," Newell told the justices in the hearing, held as an online video-conference. "We're seeking relief for the public's use of the Raccoon River."

Justice Edward Mansfield asked Thompson if "the defendants that really need to be before the court are the Legislature and the governor because of the extent of changes" the environmental groups seek.

Thompson said the regulations sought would require changes to state and federal law. The groups seek "either a repeal and replace, or a district court substituting its policy judgment for that of the Legislature," which would violate the state constitution's separation of powers, he argued.

Justice Christopher McDonald asked Newell what kind of action is possible with the environmental groups' lawsuit.

Newell said the district court could declare unconstitutional the state's voluntary approach to ensuring water quality, which encourages farmers to adopt conservation practices to reduce nitrogen and phosphorus losses but doesn't require them to do so.

It's part of the state's 2018 law that outlines spending \$270 million over about a decade to clean the state's waterways.

Newell said the state "should presume that the Legislature would act consistent with its constitutional obligation to protect the public trust as declared by this court."

Source: Des Moines Register

Waterways is a quarterly publication of the Iowa Drainage District Association. Comments can be directed to the association at:

Iowa Drainage District Association

www.iowadrainage.org
3775 EP True Parkway, #124
West Des Moines, IA 50265
515-336-5189 (phone)
515-598-7897 (fax)
515-707-7451 (cell)
jtorbertidda@gmail.com

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Mark your calendars

IDDA is planning on returning to our regular annual meeting format this year. Our 2021 annual meeting is set for Friday, December 3rd in Fort Dodge. Details will follow in later issues of the newsletter.

IDDA board meets, elects officers for 2021

The IDDA board of directors met on Wednesday, Jan. 27 at the Webster County courthouse in Fort Dodge. The first board meeting of each calendar year is the organizational meeting where officers are elected for the year.

Keith Dencklau, Webster County supervisor, was re-elected as board President and Rick Pedersen, Humboldt County supervisor was reelected as Vice-President. The board, in addition to normal business, also reviewed the progress of the IDDA legislative program for 2021. The next board meeting was scheduled for March 17th at the Calhoun County courthouse in Rockwell City.

Unattributed Wisdom

If you want to sound profound, quote something somebody else said.



Douglas L. Struyk
Attorney

Office: 515-282-6803
Cell: 402-510-1576
struyk@carneyappleby.com
www.carneyappleby.com

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Field Water Conservation and a Cleaner Lake Erie

RAISINVILLE TWP. – A new farm water management system installed in late June at the Robert Vajcner farm in Raisinville Township (Michigan) is helping to conserve water in his fields and keeping Lake Erie cleaner this summer.

The system was installed in two weeks with a \$2,000 grant awarded through the Lenawee County Soil Conservation District that can be used to halt non-point sources of pollution into lakes and streams.

The system consists of PCV pipes and head stands that are tiled below the ground to retain water in the fields rather than let it drain into the creeks. Vajcner had two water-control structures installed at \$1,000 each near the Pin Oak Drain that traverses his property off Stewart Road.

The DeJonge Farm Drainage Co. in Britton installed the structures.

Vajcner checks the two turquoise-colored head stands about every three weeks to see where water levels are at. The stands are about 3 feet above ground.

“It depends on the rainfall,” Vajcner, 83, said. “The biggest impacts I see are it keeps nitrates and cellular phosphorus in the field and not running off into the streams. The structures hold the (storm) water and nutrients back in the soil and not let them run off into the tiles. Farmers can use the water as sub-irrigation for their fields. We tile to sub-irrigate.”

Vajcner manages about 90 acres of soybeans and corn and Dan and John Secord plant and harvest the crops for him. The Secords’ farm has another 155 acres next to him.

Vajcner had two headstands installed near the drain where original drainage tiles that were installed at least 35 years ago had broken after being accidentally hit with a brush hog. The crew had to remove dozens of rocks used to provide a cover for the stands.

Vajcner can look down into the stands to check on water levels and how much water to release into the drain.

The longtime grain producer said he likes the benefits of the new structures with improving water quality, especially after getting 1.1 inches of rain last weekend.

“I’m able to hold back the water and retain in the fields to prevent drought stress,” he said. “Right now, the water levels in the fields are about equal.”

He gave a tour of the water control structures to Brit-

tany Santure, a Michigan Agriculture Environmental Assurance Program (MAEAP) technician for the Monroe Conservation District. She was impressed with what she saw.

“It’s not as management intense as people might think,” Santure said. “The grant funding pays for these structures. Bob is in the River Raisin Watershed and producers like him are eligible for 319 funding. There are some input costs for installation.”

Both she and Vajcner encouraged growers to apply for the grants to slow runoff into the creeks. Currently, just a handful of farmers are being assisted with grants.

Growers can go through the Natural Resources Conservation Service to apply.

Vajcner and his wife of 60 years, Rosemary, are no stranger to conservations efforts. The couple uses various types of watering systems to build up organic matter in the soil and to keep it moist for production.

“It’s worth it,” Vajcner said. “If we could get enough Monroe County farmers doing this, it would slow down the flooding (in Lake Erie), too.”

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Water Rule Future Remains in Question

Navigable Waters Protection Rule Continues to Face Legal Hurdles

By Todd Neeley, DTN Staff Reporter
Progressive Farmer

OMAHA (DTN) -- The future remains in flux for the Trump administration's Navigable Waters Protection Rule (NWPR), as court cases continue to play out and the potential for yet again more changes to the Clean Water Act remains in play for the next administration. Legal battles continue in several courts, where states and environmental groups have challenged the new rule.

SOUTH CAROLINA CHALLENGE

A federal court will hear arguments from EPA and environmental groups on a pair of motions for summary judgment in one ongoing lawsuit challenging the rule.

The U.S. District Court of the District of South Carolina in Charleston set a Feb. 4 hearing in this case.

In its motion filed last summer, the South Carolina Coastal Conservation League asked the court to vacate the rule, alleging the Trump administration stripped federal protections from millions of stream miles, and tens of mil-

lions of wetland acres across the country.

"If this rule stands, developers, industry, or anyone else can pollute, fill, or pave over these waters without federal permit protections provided by the CWA (Clean Water Act)," the group argues.

"At stake is the integrity of our nation's waters, including headwater streams, coastal wetlands, and public lakes across the region and country that have been protected by the CWA as 'waters of the United States' since the act's passage."

The federal government also filed a motion for summary judgment in the SC case, arguing the new rule re-established cooperative federalism with the states in protecting water.

"The agencies' extensive analysis supporting the NWPR spans more than 1,500 pages," the government said in its motion.

"These documents establish that the agencies appropriately considered and thoroughly explained their decisions, including regarding scientific matters. Contrary to plaintiffs' hyperbolic forecasts of environmental harm -- based on unreliable data -- the NWPR and its partnership with states in the CWA's regime of cooperative federalism could provide comparable environmental protection at less societal cost and net public benefit."

In 2019, the South Carolina Coastal Conservation League, Natural Resources Defense Council, National Wildlife Federation and others filed a lawsuit in South Carolina challenging the repeal of the 2015 rule. That case has changed directions, pointing at the new rule.



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The federal government, agriculture and business groups continue to fight over a new water rule in court. (DTN file photo by Jeffrey Beall)

COLORADO CHALLENGE

Although a preliminary injunction remains in place preventing the implementation of the rule in Colorado, agriculture and business groups have been allowed to intervene in a lawsuit filed by the state of Colorado.

In that lawsuit filed in the U.S. District Court for the District of Colorado, the state argues the Trump administration rule “conflicts with the text of the Clean Water Act, contravenes controlling Supreme Court precedent, contradicts the act’s objective and ignores sound science.”

The new definition of waters of the United States, the state said, “will significantly reduce the waters in Colorado protected by the Clean Water Act.”

The federal government, along with a number of agriculture and business groups, have filed an appeal of the preliminary injunction.

The intervenor groups include American Farm Bureau Federation, American Petroleum Institute, American Road and Transportation Builders Association, Chamber of Commerce of the United States of America, Leading Builders of America, National Alliance of Forest Owners, National Association of Home Builders, National Cattlemen’s Beef Association, National Corn Growers Association, National Mining Association, National Pork Producers Council, National Stone, Sand and Gravel Association, Public Lands Council, and the U.S. Poultry and Egg Association.

NEW MEXICO CHALLENGE

The administration also faces ongoing legal challenges by the New Mexico Cattle Growers Association in a federal court in New Mexico.

Alleging farmers and ranchers face potentially “crippling liability” as a result of the new rule, the New Mexico

Cattle Growers’ Association asked a federal court to issue a preliminary injunction against parts of the rule. The court has yet to rule on the motion.

The cattle producers argue the new rule from EPA and the Army Corps of Engineers will force ranchers to “spend months to years, and tens to hundreds of thousands of dollars, to obtain Army permits to farm and otherwise use their own land.”

The group wants the court to stop EPA and the U.S. Army Corps of Engineers from enforcing the rule when it comes to intermittent tributaries and “non-navigable” wetlands if they don’t abut navigable waters.

The new Navigable Waters Protection Act still leaves farmers and ranchers exposed to regulation of private property, an amended lawsuit filed in federal court alleges.

The original lawsuit filed by the New Mexico Cattlemen’s Association also targets the 1986 regulation, alleging both versions illegally regulate non-navigable ponds, wetlands and tributaries.

The group originally filed a lawsuit in November 2019 challenging the 1986 regulation. The challenge came after the EPA finalized a repeal of the 2015 rule, because the repeal reverted back to the 1986 rule until the most recent rewrite was completed.



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Conservation Progress From Afar

Managing the federal government's conservation programs has made Iowa's progress and water quality efforts through the Iowa Nutrient Reduction Strategy (INRS) look even better to Bill Northey.

As Iowa's secretary of agriculture from 2007 through 2018, Northey was one of the Iowa water quality strategy's chief architects. As U.S. undersecretary of agriculture for farm production and conservation for the Trump administration, he has a better perspective on conservation and water quality programs around the country. And he likes what he sees.

"Since I've been at USDA, I've got a great appreciation for the work that you all are continuing to do," Northey said following an outdoor session with farmers in eastern Iowa to discuss derecho damage and other issues. "You've made huge progress."

That water quality progress, Northey emphasized, was made by farmers who stepped up to take on the challenge of improving Iowa's water quality by planting more cover crops, building wetlands and adopting other conservation practices, typically investing a lot of their own money. "None of this was mandated by the government."

Continuing that momentum is critical for the future of farmer-led water quality programs, Northey said. If not, critics of farmer-led plans will have more ammo to push for strict mandates telling farmers exactly what should be done, he said.

"If we don't do it, somebody is going to tell us how to do it," Northey said. "And they are not going to be as smart as a farmer on the land who knows what needs to be done."

Source: Iowa Farm Bureau Spokesmen



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