The Judiciary – Is it the Most Dangerous Branch for Agriculture? Litigation, Regulatory Uncertainty, and the Changing Role of the Courts Part Three

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Overview

This is the third and final installment of a three-part examination of the growing influence of the judiciary on American agriculture. The first two installments explored how litigation can function as an extension of the regulatory state, sometimes threatening agricultural operations, and how courts can also serve as important protectors of private property rights and constitutional limitations on government power. The consequences of agricultural lawfare become particularly apparent when state environmental enforcement, federal land-management policies, and litigation intersect with the economic realities of farming and ranching. Administrative orders, restrictions on access to land, and litigation over environmental requirements can threaten the viability of multigenerational agricultural operations.

The King Ranch Dispute in Washington: Wetlands, Leases and the Right to a Jury

The dispute involving Wade and Teresa King, who operate King Ranch in eastern Washington, illustrates how state environmental enforcement can threaten a multigenerational livestock operation.[1] The Washington Department of Ecology (Ecology) alleges that the Kings damaged naturally occurring wetlands, including alkali ponds, through ground-disturbing work and excavation associated with stockwater ponds. Ecology issued a 2023 penalty and restoration order and later issued an additional administrative order in 2025. The state's penalty is approximately $267,540. The Kings and their counsel have estimated that the cost of compliance and restoration could exceed $3.7 million. The Kings dispute the state's characterization of their work and the legal basis for treating the ponds as regulated wetlands.

The controversy has moved through several proceedings. In a separate constitutional action challenging Washington's administrative enforcement process and the claimed right to a jury trial, a superior court

[1] See Wade King & Teresa King d/b/a King Ranch v. Department of Natural Resources, *No. 40472-2-III (Wash. Ct. App. Oct. 22, 2026)* (unpublished), slip op. at 2–4 (describing the Kings as cattle ranchers operating a multigenerational family ranch in eastern Washington and discussing the dispute involving state wetland enforcement and termination of grazing leases). See also Washington Department of Ecology, *King Ranch Penalty* (Feb. 2023) (describing the $267,540 penalty and wetland restoration order imposed against Wade and Teresa King).

dismissed the Kings' complaint in August 2026. The Kings appealed that dismissal. Separately, in their action involving the Department of Natural Resources (DNR), the Washington Court of Appeals on October 22, 2026, reversed an order transferring venue to Thurston County.[2] The appellate court reversed the trial court's venue-transfer order and remanded for the trial court to determine the viability of their statutory-duty claims. It did not decide whether the Kings violated wetlands law, whether the Ecology orders were valid, or whether they ultimately have a right to a jury trial.

That distinction is important. The October decision was procedural, not a final victory on the merits. But the underlying dispute raises serious questions about the combination of administrative enforcement, substantial civil penalties, restoration demands, and the loss of access to leased grazing land. The Kings allege that the state's actions jeopardize their ability to operate a ranch that has used public and private lands in the region for generations. When a state agency can impose major financial sanctions and compel expensive restoration through an administrative process, the availability of meaningful judicial review (and the constitutional allocation of adjudicative power) matters greatly. The case is a reminder that the consequences of an environmental order may reach well beyond the acreage identified in the order.

Federal Land Management, Conservation Policy, and Lawfare

The Forest Service's revision of the management plan for the Cimarron National Grassland in southwest Kansas (approximately 108,621 acres) illustrates another potential source of conflict for ranchers.[3] Changes in grazing policy, access, water development, infrastructure, and wildlife management can materially affect ranching operations, particularly where federal parcels are intermingled with private land. The concern is not simply what the agency decides, but what happens next. Administrative planning decisions frequently invite litigation by environmental and activist organizations seeking preliminary injunctions to halt grazing or other traditional agricultural uses. A dispute that should be resolved through statutory administrative procedures can quickly become a judicial determination of federal land-use policy. This is lawfare in practice - and an illustration of why the judiciary can become the most dangerous branch when judges substitute their policy preferences for the legal requirements established by Congress.

[2] King v. Franz, No. 40472-2-III, 2026 Wash. App. LEXIS 2380 (Wash. Ct. App. Oct. 22, 2026).
[3] The Forest Service initiated the Cimarron and Comanche National Grasslands management plan revisions process in November 2024.

A related, but separate, concern is the Biden Administration's 30-by-30 initiative, which established a goal of conserving 30 percent of the nation's lands and waters by 2030.[4] Although the initiative did not itself authorize federal land acquisition or transfer private property to the government, and was later revoked by President Trump,[5] it raised legitimate concerns about regulatory pressure, conservation easements, and restrictions on working lands. Those concerns become particularly serious when broad conservation objectives are translated into agency restrictions and then enforced through litigation designed to shut down grazing and other agricultural activities. The result is that activist organizations can use the courts to accomplish indirectly what they could not obtain through legislation. When preliminary injunctions effectively determine land-use policy before the underlying legal dispute is resolved, the judiciary risks becoming an instrument of regulatory policymaking rather than an independent arbiter of the law.

The Judiciary Is Powerful Because Its Orders Are Backed by the State

This brings us back to Alexander Hamilton. Hamilton was right that the judiciary does not command armies or appropriations. But the judiciary possesses something else: the power to issue binding judgments. A federal court can stop construction. It can enjoin farming practices. It can invalidate an agency decision. It can require an agency to reconsider an action. It can uphold a regulation. It can impose contempt sanctions. And its judgments can remain in effect for years while an appeal proceeds. For a farmer, that can be just as consequential as an appropriation or an administrative rule. This is why judicial restraint matters. Judicial restraint does not mean judicial passivity. Courts have a constitutional duty to invalidate government actions that violate the Constitution or exceed statutory authority. But courts should be cautious about substituting judicial policy preferences for legislative choices.

The Supreme Court's recent administrative-law decisions - *Loper Bright*, *West Virginia v. EPA*, *Sackett*, *Horne*, and *Cedar Point Nursery* - reflect an important theme: government power has boundaries, and those boundaries matter most when the property belongs to someone else.

Conclusion

Farmers do not object to reasonable laws. They need them. Agriculture depends upon predictable rules governing water, property, contracts, taxation, markets, land use and environmental protection. What

[4] See Exec. Order No. 14008, § 216, 86 Fed. Reg. 7619, 7627 (Jan. 27, 2021); U.S. Department of the Interior, *Conserving and Restoring America the Beautiful* (May 2021).
[5] Executive Order 14148, Jan. 20, 2025.

farmers cannot effectively operate under is a system in which the applicable rules change depending upon who files the next lawsuit. That is why USDA's decision to create a mechanism for reporting agricultural lawfare is significant. The Department's initiative defines the problem broadly enough to include administrative, legal and legislative systems. Whether every reported instance constitutes actionable "lawfare" remains to be seen. But every credible complaint deserves thorough scrutiny, and evidence rather than regulatory pressure must dictate the outcome. Courts should decide actual controversies according to law rather than politics. Agencies should follow statutes rather than stretch them. Advocacy groups should be free to litigate legitimate claims. And farmers and ranchers should have meaningful access to the courts when government exceeds its authority.

But the opposite must also be true. Farmers and ranchers should not have to win a decade-long lawsuit to establish that they have the right to farm their own land. That is not what Hamilton envisioned when he described the judiciary as the least dangerous branch. And it is not what the Constitution's separation of powers requires. The real danger is not that judges exercise judicial power. The danger comes when any branch of government - executive, legislative or judicial - begins exercising powers that belong to another branch, or when the legal system itself becomes a substitute for the political process.

For agriculture, that distinction is anything but academic. The legal system may ultimately determine whether the next generation inherits a productive, working farm - or simply the legal bills from defending it. When courts legitimize administrative overreach, effectively make policy through injunctions, or leave those harmed without a meaningful remedy, the judiciary ceases to be merely an arbiter of disputes. It becomes a formidable instrument of power and, potentially, the most dangerous branch of government for rural America.

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