

Rights, Property, and the Constitution: Why New “Rights” Matter to Farmers

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law

Roger McEowen's Blog: <https://agriculturallaw.lawprofessorsblogs.com/>

July 2026

Overview

As America marked its 250th Independence Day, public debate continued over an idea gaining traction internationally: the claim that people possess a fundamental "right to a healthy environment." At first glance, the concept sounds difficult to oppose. Everyone wants clean air, clean water, and responsible stewardship of natural resources. The more important question, however, is whether broad environmental aspirations should become enforceable legal rights. That distinction matters, particularly for agriculture.

The Constitution and Government Power

The American constitutional system was built largely around protecting citizens from excessive government power. Rights such as free speech, due process, and private property establish limits on government authority rather than guaranteeing particular policy outcomes. By contrast, a legal right to a "healthy environment" would require courts, regulators, or legislatures to decide what qualifies as "healthy" and who bears responsibility for achieving it.

Those questions have no easy legal answers.

Unlike traditional constitutional rights, a healthy environment has no universally accepted definition. Does it mean restoring ecosystems to their natural condition? Does it prohibit ordinary farming practices? How much fertilizer, irrigation, livestock production, or carbon emissions become legally unacceptable? Because the concept is inherently subjective, it creates uncertainty for landowners, businesses, and courts alike.

For farmers and ranchers, uncertainty often translates into risk. Agriculture necessarily changes the landscape. Crops are planted, fields are cultivated, water is managed, and livestock are raised. These activities have always been viewed as productive uses of private property that benefit society by producing food, fiber, and fuel.

Property Rights as the Safeguard of Liberty

America's legal tradition has long recognized strong private property rights as an important safeguard of liberty. Secure ownership encourages long-term stewardship because landowners have every incentive to preserve the productivity and value of their property for future generations. That principle has shaped both American law and agricultural development for centuries.



Istanbul Declaration. Recent international developments have renewed discussion of these issues. In April 2026, delegates at the Inter-Parliamentary Union adopted the Istanbul Declaration, which encourages governments to strengthen environmental governance and develop institutions focused on long-term sustainability. Supporters view the declaration as an important framework for addressing global environmental concerns. Critics argue that its broad language could invite courts or regulators to expand governmental authority beyond what domestic constitutions authorize.

Whether those concerns ultimately materialize remains to be seen, but the debate illustrates why clear legal standards matter.

For agriculture, predictability is essential. Farmers routinely make investments that stretch over many years - from purchasing machinery to financing land and installing irrigation systems. They depend upon stable legal rules when making those decisions. If environmental standards become increasingly uncertain or subject to judicial interpretation rather than legislative action, planning becomes substantially more difficult.

What About Tax?

The tax system could also become part of the discussion. Environmental policy has increasingly intersected with tax policy through incentives, credits, and proposals for various environmental taxes. Some observers worry that broad environmental rights could eventually be used to justify additional taxes or limitations on existing agricultural tax provisions. Whether such proposals are adopted will depend upon legislative choices, but they illustrate how constitutional debates can affect everyday farming operations.

International Standards?

A recent U.S. Supreme Court decision also highlights the importance of constitutional structure. In *Cisco Systems, Inc. v. Doe*,¹ the Court emphasized that federal courts may not create new private causes of action based solely on evolving international norms without congressional authorization. Regardless of one's views on environmental policy, the decision reinforces the principle that significant legal changes generally belong to elected lawmakers rather than the judiciary.

Conclusion

Reasonable people can disagree about environmental policy. Most farmers have demonstrated for generations that productive agriculture and responsible stewardship are compatible goals. The larger constitutional question is who should establish the rules and how those rules should be created.

¹ No. 24-856, 2026 U.S. LEXIS 2714 (U.S. Sup. Ct. Jun. 23, 2026).

As the nation enters its third century of constitutional government, preserving clear lines between legislative policymaking, judicial interpretation, and international declarations remains important. Environmental protection is a legitimate public concern, but so are property rights, legal certainty, and democratic accountability.

Finding the proper balance between those interests will continue to shape agricultural law for years to come.

Note: A more detailed and thorough version of this article can be found at:
mceowenaglawandtax.substack.com.

For more information about this publication and others, visit AgManager.info.

K-State Agricultural Economics | 342 Waters Hall, Manhattan, KS 66506-4011 | www.ageconomics.k-state.edu

[Copyright 2026: AgManager.info](http://AgManager.info) and K-State Department of Agricultural Economics



K-State Department Of Agricultural Economics