

# [One Wyomingite KOs The EPA; Another Enters The Ring](#)

Thursday, 08 May 2014 12:06

Western Ag Reporter (WAR), Billings, MT

*In Washington D.C., the EPA is a juggernaut, but in Wyoming, it got stopped by a jury.*

By William Perry Pendley, Mountain States Legal Foundation

In mid-March, Fox News headlined a story out of Wyoming that the Environmental Protection Agency (EPA) had targeted a Fort Bridger (population 345) welder for violating the Clean Water Act and threatened to fine him \$75,000-a-day unless he restored a wetland that he altered without a permit and, therefore, contrary to federal law. Andy Johnson, who owns eight acres in Uinta County in southwestern Wyoming on which he runs horses and watches his three daughters play, says the stock pond he built, filled with crystal-clear water, and used to create brook and brown trout and duck and geese habitat was permitted by the Wyoming State Engineer's Office. The timing could not have been worse. Wyoming was still fuming over the EPA's December 2013 decision to place a million acres, including the town of Riverton (population 10,000), inside the Wind River Indian Reservation. In doing so, the EPA ignored 110 years of history and state, federal, and U.S. Supreme Court rulings. Moreover, the EPA was a month away from issuing new regulations to give it even more authority over private land like that owned by Johnson by broadening the definition of "waters of the United States."

Wyoming's Republican senators demanded the EPA withdraw the Compliance Order, which they labeled, "a draconian edict of a heavy-handed bureaucracy" that puts "each and every landowner throughout the country" in fear. Johnson for his part did not back down. "I have not paid them a dime, nor will I... If you need to stand up and fight, you do it." He can draw solace from another Wyomingite who stood up, fought the EPA, and won.

In 2005, David Hamilton of Worland (population 5,500), in north-central Wyoming, cleaned out an irrigation ditch on his 400-acre farm. Johnson and his wife may have put their "blood, sweat, and tears into [their] dream" of a stock pond, but Hamilton spent \$30,000 hauling away discarded cars, broken appliances, and assorted debris that lined the ditch to foil erosion and making other agricultural improvements. The project was a success, but the EPA disagreed. In 2007, it showed up on the farm, and in 2010, it sued Hamilton in federal court.

The EPA claimed Hamilton destroyed 8.8 acres of wetlands, which is an impossibility given that Worland has the least rainfall in Wyoming -less than 8 inches a year. Facts did not matter to the EPA; instead, it relied on the National Wetlands Inventory - prepared by the U.S. Fish & Wildlife Service using Google Earth satellite images - to target Hamilton and to tally wetlands damaged. Unfortunately, when Hamilton's attorney, Harriet M. Hageman, challenged the EPA, the district court ruled that "Slick Creek," which does not exist, having been replaced by Hamilton's irrigation ditch, is "navigable waters of the United States" as "a matter of law."

Worse rulings were to come. Hageman's proffers of evidence that Hamilton's work had improved the environment, that the EPA was seeking to extort nearly a million dollars from her client, and that the EPA's investigation was shoddy and the basis for its lawsuit flawed and insupportable... all were rejected as "unduly prejudicial." The jury never learned that Hamilton had reduced sediment into the Big Horn River, decreased water use on the property, reduced the release of chemicals off the land, and in the process created a beautiful and well-managed farm that produces a variety of crops and sustains stock grazing.

It did not matter. After a two-week trial, the jury returned after only 140 minutes, which included a meal and a walk, to rule FOR Hamilton. His were "dredge or fill activities," it held, exempt from federal permitting as "normal farming and ranching activities," including upland soil and water conservation. Moreover, the jury found that "Slick Creek" is a man-made irrigation ditch and exempt from federal law. Hamilton won!

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