Rights Inflation and the Myth of a "Healthy Environment"

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law
Roger McEowen's Blog: https://agriculturallaw.lawprofessorsblogs.com/
September 2026

Overview

Academics like to argue academic things. Most of the time, those arguments remain academic and are not worth a producer's time. But occasionally an academic theory escapes the seminar room and begins to affect the legal rules under which farmers and ranchers operate. The growing international movement to recognize a universal "human right to a clean, healthy and sustainable environment" is one such development.

The United Nations General Assembly adopted a resolution in 2022, recognizing a human right to a clean, healthy and sustainable environment.[1] The resolution is not, by itself, a source of enforceable federal law in the United States. But that distinction is important precisely because it highlights the question of what happens when an aspirational environmental principle is transformed into a judicially enforceable domestic right?

The concern is not whether clean water, clean air, healthy soil, and responsible stewardship are desirable. Of course they are. The concern is whether calling an environmental condition a "human right" provides a coherent legal rule. For agriculture, the answer should be approached with considerable skepticism.

What Exactly Is a "Healthy" Environment?

Law depends upon boundaries. Farmers, ranchers, lenders, landowners, regulators, and courts all need to know what conduct is lawful and what conduct is not. A right that cannot be defined with reasonable precision is a poor candidate for judicial enforcement.

What, precisely, constitutes a "healthy" environment? Does it mean an environment untouched by human activity? Obviously not. Agriculture necessarily changes the landscape. Farmers cultivate soil, irrigate crops, apply fertilizer and crop-protection products, manage livestock, harvest timber, build roads and structures, and use machinery. These activities alter the environment - but they also produce the food and fiber upon which society depends.

The difficult question is therefore not whether environmental quality matters. It is who decides what level of environmental alteration is acceptable, based upon what evidence, under what statute, and subject to what judicially reviewable standards.

That is where a vague "right" becomes dangerous. If "healthy" is defined case-by-case by judges, courts can become de facto environmental legislatures. The constitutional structure generally assigns lawmaking to elected bodies, not courts. The Supreme Court's modern administrative law cases reinforce the importance of requiring agencies to identify genuine statutory authority before exercising transformative regulatory power. In *West*

1 United Nations General Assembly, Resolution 76/300, The Human Right to a Clean, Healthy and Sustainable Environment (July 28, 2022).

Virginia v. Environmental Protection Agency,[2] for example, the Court rejected EPA's effort to discover a sweeping power in a long-extant statute where Congress had not clearly authorized the claimed regulatory transformation.

Agriculture Is Not an Environmental Abstraction

The proposed environmental right also runs into a practical reality that environmental litigation sometimes obscures: agriculture is an economic activity conducted on private property. A farmer is not merely an occupant of an ecosystem. The farmer owns (or leases) and borrows money, purchases equipment and inputs, hires labor, assumes weather and market risk, and produces commodities that enter a national and international food system. The legal environment surrounding the farm therefore affects not only the farmer but also land values, credit availability, production costs, and ultimately food prices.

That is why regulatory certainty matters so much in agricultural law. A producer may spend millions of dollars on land, irrigation equipment, buildings, livestock facilities, drainage systems, conservation improvements, and machinery. Those investments are made with the expectation that the governing legal rules will not suddenly change because a court adopts a new, undefined environmental entitlement.

***Sackett* and the Importance of Legal Boundaries**

The Supreme Court's decision in *Sackett v. EPA*,[3] provides a useful illustration. The case involved the federal government's authority under the Clean Water Act to regulate wetlands. The Court rejected EPA's expansive interpretation and required a more definite connection between the wetland and traditional navigable waters.

Sackett was not an agricultural tax case. But it is highly relevant to agricultural law because farmers routinely encounter the Clean Water Act when constructing roads, drainage systems, farm ponds, irrigation improvements, barns, livestock facilities, and other improvements. The lesson is broader than wetlands: when Congress creates a regulatory program, the regulated landowner is entitled to know where the jurisdictional line is.

That principle should not be controversial. A farmer should not have to hire a team of lawyers and consultants to determine whether an ordinary agricultural activity might violate an amorphous environmental "right."

Property Rights Are Not the Enemy of Environmental Stewardship

There is another problem with the rhetoric surrounding a universal environmental right: it can create the false impression that private property and environmental stewardship are competing concepts. They are not. Private ownership gives landowners powerful incentives to maintain the productivity and value of their property. A farmer who degrades soil, wastes water, destroys fences, mismanages livestock, or damages the productive capacity of the farm generally bears much of the economic consequence. That is a very different incentive structure from a system in which an unelected decision-maker can impose an ever-expanding list of environmental obligations without a clear legislative mandate.

2 597 U.S. 697 (2022).

3 598 U.S. 651 (2023).

The Supreme Court has long recognized that environmental and land-use regulation can be legitimate while also recognizing constitutional limits on government interference with private property. In *Lucas v. South Carolina Coastal Council*,[4] the Court held that a regulation depriving property of all economically beneficial use generally constitutes a taking requiring compensation, subject to the background-principles exception.

The Supreme Court's decision in *Cedar Point Nursery v. Hassid*[5] provides an especially useful illustration because it involved agricultural property directly. In *Cedar Point*, California regulations required agricultural employers to allow union organizers onto private agricultural property for specified periods to meet with and solicit employees. The Supreme Court held that the regulation constituted a per se physical taking under the Fifth and Fourteenth Amendments. The Court reasoned that the regulation appropriated the growers' right to exclude third parties from their property - a fundamental element of the property right.

The significance of *Cedar Point* extends beyond labor law. The case demonstrates that private property is not merely an obstacle standing in the way of achieving a preferred public policy objective. Agricultural land is privately owned property, and the government's authority to pursue legitimate public purposes does not eliminate the constitutional protections that accompany ownership. The Takings Clause therefore places a meaningful constitutional boundary around governmental efforts to impose public objectives on private land. Environmental objectives - however worthy - do not automatically displace those protections.

Likewise, *Lingle v. Chevron U.S.A. Inc*.,[6] clarified that regulatory-takings doctrine is concerned with the burden government places on private property - not with having courts conduct a free-floating inquiry into whether regulation is sufficiently effective at achieving its stated purpose.

The Judicial-Lawmaking Problem

The greatest danger is not environmental regulation itself. The United States has had environmental statutes for decades, and many of those statutes address legitimate public concerns. The danger is allowing broad moral aspirations to become judicially enforceable commands without the discipline of legislative text.

Consider the difference. Congress can enact a statute establishing standards for water quality. Congress can authorize an agency to regulate particular pollutants. Congress can establish permitting requirements. Congress can create conservation programs. Congress can impose taxes or provide tax incentives. Those decisions are subject to the political process, and voters can hold elected officials accountable. A judicially created “right to a healthy environment” is different. Once characterized as a fundamental right, the question becomes who defines the right and what remedy a court may impose. That can move environmental policy away from legislatures and toward litigation.

4 505 U.S. 1003 (1992).

5 594 U.S. 139 (2021).

6 544 U.S. 528 (2005).

The experience of climate litigation illustrates the point. In *Juliana v. United States*,[7] the Ninth Circuit rejected the plaintiffs' attempt to obtain judicial relief requiring the federal government to develop a comprehensive plan to address climate change, concluding that the requested remedy exceeded the court's authority. The case demonstrates the institutional problem: even where environmental concerns are profound, Article III courts are not general-purpose environmental policy commissions.

What About Agricultural Taxation?

The tax consequences deserve particular attention. Tax policy already influences agricultural behavior. Congress uses depreciation rules, conservation deductions, credits, income averaging, conservation-program treatment, and other provisions to influence investment and production decisions. There is nothing inherently wrong with Congress using the tax code to pursue legitimate policy objectives. But there is a meaningful difference between a democratically enacted tax provision and an amorphous environmental obligation that is later translated into tax penalties or disfavored treatment.

A "healthy environment" right could potentially become a rhetorical foundation for proposals to impose carbon taxes, increase taxes on certain agricultural inputs, eliminate deductions, condition tax benefits on particular production practices, or otherwise use the tax system as an enforcement mechanism. Those proposals should be debated as tax and economic policy - not smuggled into the law under the label of a newly discovered human right.

For farmers, that distinction matters. A producer should be able to determine from the Internal Revenue Code, regulations, and properly promulgated administrative guidance what tax treatment applies to a transaction. The tax system should not become a backdoor mechanism for enforcing undefined environmental preferences.

Voluntary Conservation Is Different

There is also a significant distinction between voluntary conservation incentives and compulsory environmental mandates. Programs administered through USDA and its agencies can encourage producers to adopt conservation practices while recognizing that farms differ in soil, climate, water availability, markets, livestock systems, and economic circumstances.

That approach respects an important agricultural-law principle: one size does not fit all. A conservation practice that makes sense on one farm may be uneconomic or agronomically inappropriate on another. Incentives can encourage innovation without pretending that every farm operates under identical circumstances.

The better policy is therefore not to abandon environmental regulation. It is to insist that environmental regulation remain grounded in legislation, science, due process, economic reality, and clearly defined legal standards.

7 947 F.3d 1159 (9th Cir. 2020).

The Food-Security Question

There is another consequence that deserves more attention: food security. If regulatory uncertainty increases the cost of producing food in the United States, production does not necessarily disappear. It may move. Land may shift into different uses. Production may become more concentrated in larger operations that are better able to absorb regulatory and compliance costs. Food processing and input industries may further consolidate. Imports may become more attractive.

The irony is that a legal regime adopted in the name of environmental improvement could produce consequences that are environmentally and economically counterproductive. If domestic production declines and production shifts to jurisdictions with less efficient environmental practices, the global environmental result may be worse rather than better.

This is why agricultural law should always ask the practical question: Who bears the cost?

Constitutional Realism Rather Than Utopian Rhetoric

The American constitutional tradition generally protects individuals against government abuse. Speech, religious liberty, due process, equal protection, and property rights impose limits on government power. These protections are enforceable because the Constitution and laws establish identifiable legal standards.

The proposed "right to a healthy environment" is fundamentally different. It is a positive entitlement to a particular environmental condition. Achieving that condition necessarily requires someone (usually government) to decide what the condition means and what other people must do to produce it. That does not make environmental protection illegitimate. It means environmental protection should be pursued through constitutionally accountable institutions.

Conclusion: Environmental Stewardship Needs Law, Not Slogans

There is nothing conservative about ignoring environmental problems, and there is nothing inherently progressive about demanding clean water and healthy soil. Farmers have an enormous stake in both. But good ends do not eliminate the need for good law.

A "human right to a healthy environment" sounds attractive precisely because almost everyone supports a healthy environment. But the legal question is harder: Who defines "healthy"? What conduct is prohibited? What evidence controls? Who pays? Which governmental institution has authority? What happens to private property? What happens to food production? What remedy does a court have when it determines that an environmental right has been violated? Those questions cannot be answered by rhetoric.

Environmental policy should be established through legislation, scientifically grounded regulation, voluntary conservation incentives where appropriate, and judicial review within recognized constitutional and statutory boundaries. Private property rights should remain a central component of that framework. And when government substantially interferes with those rights, the Constitution's protections should remain meaningful.

The “right to a healthy environment” may be a noble aspiration. But noble aspirations do not automatically become constitutional rights. The transformation of every desirable social objective into a judicially enforceable “right” is rights inflation - and for agriculture, it could prove extraordinarily expensive.