

The “Top 10” Ag Law and Tax Developments of 2025: Number 7

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Overview

For generations, the “right to exclude” – the ability of a landowner to decide who can and cannot enter their property—has been considered the most essential stick in the bundle of property rights. However, a series of legal shifts culminating in the 2025 decision in *Sanchez v. Torrez*¹ suggests that for farmers and ranchers, this right is being systematically dismantled by the expansion of the Public Trust Doctrine.

What began as a narrow legal concept to protect commerce on major waterways has evolved into a broad mandate that allows the state to bypass constitutional protections, leaving agricultural operations vulnerable to physical invasion and economic instability.

The New Mexico Precedent: A “Taking” by Another Name

The litigation in *Sanchez* serves as a sobering case study for landowners across the American West. The dispute centered on whether the public has the right to utilize streambeds that flow through private ranches.

The landowners relied on the landmark U.S. Supreme Court case *Cedar Point Nursery v. Hassid*², which explicitly stated that when the government grants third parties a right to physically invade private property, it constitutes a *per se* physical taking that requires just compensation. Despite this, the District Court for the District of New Mexico dismissed the challenge. The court’s logic was simple but devastating for property owners: because the state constitution claims all water belongs to the public, the public has a “pre-existing” easement to use that water and any land underneath it.³

By reclassifying a physical invasion as a “reaffirmation of a public easement,” the courts have effectively bypassed the Fifth Amendment. For landowner the result is the same – strangers on their land without consent and without compensation from the state.

The Negative Impacts on Agricultural Operations

The expansion of the Public Trust Doctrine isn’t just a theoretical legal debate; it has tangible, negative consequences for farmer, ranchers and other rural landowners. Farmers and ranchers maintain strict controls over their land to prevent the spread of disease and to manage the safety of their livestock.

¹ 763 F.Supp.3d 1309 (D. N.M. 2025).

² 594 U.S. 139 (2021).

³ See *Adobe Whitewater Club of New Mexico. v. New Mexico State Game Commission*, 519 P.3d 46 (Sup. Ct. N.M. 2022).



- **Disease Transmission:** Public recreationists can unknowingly carry invasive species or pathogens on their boots and gear, threatening both crops and herd health.
- **Liability Burdens:** While many states have recreational use statutes, the presence of the public on “wet” portions of private land creates a legal gray area. If a fisherman is injured by a bull or trips on a submerged fence line, the landowner often faces the stress and expense of litigation.

Interference with Livestock Management

Ranching requires the ability to move cattle through riparian areas for watering and grazing. When a stream becomes a public thoroughfare, the “working” nature of the land is compromised.

- **Spooked Livestock:** Human presence, particularly with dogs or loud equipment, can stress livestock, leading to weight loss, injury, or broken fences.¹
- **Fragmented Management:** If a rancher cannot exclude the public from the heart of their property—the water source—they effectively lose control over the most vital portion of their operation.

Devaluation of Private Assets

Property value is largely derived from exclusivity and utility. When a state court declares that a once-private stream is now a public playground, the market value of that ranch plummeted.

- **Investment Chilling:** Who will invest millions in a riparian restoration project or irrigation infrastructure if the public has a permanent, uncompensated right to occupy that space?
- **“Regulatory Creep”:** As seen in Sanchez, the doctrine is “elastic.” What is a “reasonable” use today (fishing) may expand tomorrow to include camping or motorized access, further eroding the owner’s quiet enjoyment of their land.

The Conflict of Two Legal Worlds

The Public Trust Doctrine creates a direct collision between two irreconcilable views of the law:

| Traditional Property Rights | Expanded Public Trust Doctrine |
|--|---|
| Ownership includes the land under the water (streambed). | The state holds the water and beds in trust for the “people.” |
| Government entry requires compensation (5th Amendment). | Entry is a “reserved right” and requires no payment. |
| Certainty allows for long-term agricultural investment. | Rights are subject to shifting judicial and “social” values. |

Conclusion

The appeal of Sanchez to the U.S. Court of Appeals for the Tenth Circuit represents a critical juncture for the agricultural community. If the ruling stands, it provides a blueprint for other states to use “foundational laws” to strip away the right to exclude without ever having to pay for it.

For farmers and ranchers, the Public Trust Doctrine is no longer a tool for preserving navigation; it has become a “super-easement” that threatens to turn private investments into public parks, undermining the economic viability of the American ranch.

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