



Written by [Steve Byas](#) on May 30, 2017

## Farmer Fined \$2.8 Million for Plowing His Own Land

It's a case that involves property rights, due process of law, constitutionally protected rights, and rule by bureaucratic fiat.

A farmer in California's Tehama County will undergo a trial this August in an attempt by the federal government and the state of California to fine him \$2.8 million for failing to get a permit to plow his own field and plant wheat.



John Duarte, owner of Duarte Nursery, purchased 450 acres near Modesto in 2012 with the intention of growing wheat. But the property included land designated "wetlands" by the U.S. Army Corps of Engineers. Because of this, Duarte employed a consulting firm to determine which areas provided drainage for some creeks, making them "waters of the United States." This information would enable him to avoid plowing areas that could cause conflict with governmental authorities.

Although the Clean Water Act specifically states that farmers plowing their own fields are exempt from the rules against discharging material into "U.S. waters," the Army Corps of Engineers blocked Duarte from harvesting his wheat in February 2013 because he had failed to obtain a permit from them.

Duarte's lawyer, Anthony Francois, argued that the action by the Corps sets a dangerous precedent. "The case is the first time that we're aware of that says you need to get a permit [from the Army Corps of Engineers] to plow to grow crops," he declared. "We're not going to produce much food under those kinds of regulations."

Because of this, Duarte sued both the California Central Valley Regional Water Quality Control Board and the Army Corps of Engineers, arguing that his constitutional rights of due process were violated, since a cease and desist order was given to him, with no hearing. The U.S. Attorney's Office responded with a lawsuit of its own, claiming it was simply enforcing the Clean Water Act, because depositing dirt into wetlands and streams on Duarte's own property was a violation of the law.

The U.S. Attorney's Office explained its reasoning in going after Duarte. "Even under the farming exemption, a discharge of dredged or fill material incidental to the farming activities that impairs the flow of the waters of the United States still requires a permit, because it changes the chemical, physical and biological integrity of the waters."

The government is actually not satisfied with just forcing Duarte to pay almost \$3 million for his alleged violation of the law. Kimberly Mueller, of the U.S. District Court for the Eastern District of California, ruled in favor of the multi-million-dollar fine last year, and has now set an August trial date, where the



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government is also asking her to make Duarte repair the “damage” to the wetlands, which will involve smoothing out the soil and replanting vegetation found in the wetlands. They are also requesting that Duarte be ordered to purchase *other* wetlands as an additional compensation for the alleged damage he caused to property found south of Red Bluff.

“A plain reading of the rules says you don’t need a permit to do what he did,” Duarte’s lawyer Francois declared. “How do you impose a multi-million penalty on someone for thinking the law says what it says?”

How indeed. It would appear that the actions of the U.S. Army Corps of Engineers violate several principles and direct wording found in the U.S. Constitution.

For example, the Fifth Amendment to the Constitution specifically forbids the federal government (which one supposes would include the Army Corps of Engineers) from depriving any person of “property, without due process of law.” In this case, Duarte has clearly been deprived of some of his property by a federal agency. The 5th Amendment also says that neither shall “private property be taken for public use without just compensation.”

Considering that the government’s position that the water on Duarte’s land is part of the “waters of the United States,” it would appear that a portion of his land has indeed been “taken for public use.” Not only are they refusing to compensate Duarte for taking his land for public use, they are also proposing to fine him for how he is using his own land.

Another relevant amendment is the 8th, which states that “excessive fines” shall not be imposed. If nearly \$3 million (plus the other punishments envisioned by the federal government) is not “excessive,” then one must wonder what *would* be considered excessive? For planting wheat on one’s own land!

Then there is the nearly-forgotten 10th Amendment, which reads, “The powers not delegated to the United States *by the Constitution*, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” (Emphasis added). The powers delegated to the U.S. government by the Constitution are found in Article I, Section 8 of the Constitution. None of these enumerated powers can reasonably be said to allow what has been done by the Army Corps of Engineers, or any other agency of the federal government.

“Federal” land is mentioned, to be sure. In Article I, Section 8, the Constitution does allow federal authority to be exercised “over all places purchased by the consent of the legislature of the State in which the same shall be.” At no time has the California State Legislature sold Mr. Duarte’s land, or any portion thereof, to the federal government. And even if it had, the Constitution is quite clear as to what federally-purchased land can be used for: “the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.” Duarte’s farm does not fall under any of those descriptions.

Another consideration in this controversy is the position of President Donald Trump. Trump signed an executive order directing the Environmental Protection Agency (EPA) to begin repealing the rule known as Waters of the United States (WOTUS). The rule had been created by the EPA and the Corps, not an act of Congress. Trump, in signing the executive order, called the actions of the EPA and the Corps “a massive power grab,” which taken to its logical conclusion, would give control to the federal government of “nearly every puddle or every ditch on a farmer’s land.”

It is the job of the president to make sure the laws are “faithfully executed.” In this case, federal agencies are defying the president of the United States — in essence, saying that the executive power given to the president in Article II of the Constitution cannot be used by the president to reign in



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federal bureaucrats.

Senator Joni Ernest (R-Iowa), actually used the Duarte case as an example of an out-of-control EPA, during the confirmation hearings for EPA Secretary Scott Pruitt (who, as attorney general of Oklahoma had sued the EPA). She used a photograph of Duarte's furrows during the hearings, to ridicule the arguments that Duarte's "furrow tops now serve as small mountain ranges."

Duarte told the *Los Angeles Times*: "The wetlands in my case amount to very minor depressions — they're vernal pools — far away and disconnected from any stream or navigable waters. Sometimes they're just dark spots in the grass to the layperson."

How Duarte will fare when the case goes before a jury later this summer is anyone's guess, but Judge Mueller, a 2010 appointee of President Barack Obama, cannot be expected to favor either him, the Constitution, the Bill of Rights, or the right of an American citizen to use his property as he wishes.



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