



Written by [Joe Wolverton, II, J.D.](#) on May 16, 2016

## Montana Disabled Vet Convicted of EPA Violations; Forced From Home Because of Gun Safe

No sooner had news of the settlement of [Andy Johnson's satisfactory settlement](#) with the Environmental Protection Agency (EPA) been made public than the tale of another victim of federal regulatory terrorism surfaced.

Joseph Robertson is a 77-year-old disabled veteran who is being forbidden by the federal government from building ground water ponds on the property in Jefferson County, Montana, that his family has owned and worked for over 40 years.

In documents sent to this reporter, Robertson's record of being bullied by the bureaucracy is laid out step by step, and it is sickening.

According to the information I received, the EPA is charging Robertson with two counts of depositing dredge materials in the waters of the United States and one count of depredation of Forest Service property associated with Johnson's unpatented mining claim.

The sentence for these "violations" is five years in prison and a \$250,000 fine for each of the three counts. This will ruin Robertson, whose health has been in steady decline since the EPA began its attack on his property rights.

According to the evidence presented by Robertson at hearings on these charges, it appears that agents from the EPA have attempted to drain Robertson's ponds and have repeatedly obstructed efforts by Robertson and his family to exercise property rights and continue contracts they have with several groups, including Helena Veterans Support Unit, for the lease of their land.

In April 2016, Kagel Environmental, LLC (KE), an environmental consulting firm based in Rigby, Idaho, contacted Robertson, offering to conduct an on-site field inspection and environmental site assessment of the property being targeted by the EPA to determine if there was any basis to the bureaucrats' claims and the conviction of Robertson on those charges.

A copy of this report was provided to this reporter and details of it demonstrate the validity of Robertson's claim that he is being unjustly harassed by agents of the Obama administration.

The purpose of the study conducted pro bono by Kagel Environmental on Robertson's property was to "provide [Robertson] with KE's professional opinion regarding the general identification and location of the extent of any federally regulated waters of the U.S., including wetlands, especially as regards the alleged violation of the Clean Water Act."

Not unsurprisingly, KE's report found that Robertson's pond construction "did not appear to have required a permit since the work was accomplished" in accordance with federal regulations regarding dredging and the material that drips back into the water during that process.





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Specifically, the study found that the creek where Robertson dredged his ponds “lacks a continuous surface hydrological connection to a traditionally navigable water source of the U.S.” as mandated by federal regulation. In other words, the Cataract Creek channel running between the ponds doesn’t lead to any navigable waters. The navigability of this creek was one of the central elements of the charges brought against Robertson by the EPA.

In support of its findings, KE cited a 2006 Supreme Court decision written by late Justice Antonin Scalia in the *Rapanos v. United States* case.

Scalia wrote that ephemeral and intermittent streams do not qualify as “waters of the United States” and are therefore not subject to regulations promulgated under Section 404 of the Clean Water Act.

Section 404 defines the waters of the United States as “only those relatively permanent, standing or continuously flowing bodies of water forming geographic features that are described in ordinary parlance as “streams,” “oceans,” “rivers,” and “lakes.”

Expressly exempted from the statute’s jurisdiction are “channels through which water flows intermittently or ephemerally.”

Next, KE determined that even if there was some sort of Clean Water Act application to Robertson’s ponds, the ponds would be legal as the total area of discharged material amounts to “less than 0.11 acres.” Federal nationwide permits authorize a total dredge area of anything less than 0.5 acres, thus exempting Robertson’s ponds from the regulation’s bailiwick.

Finally, KE’s tests — conducted on-site by a “certified professional wetland scientist and a federal enforcement officer specializing in Section 404 Clean Water Act — found there was no Section 404 jurisdiction and that there was no violation of federal law or regulation in Robertson’s ponds.

And none of this mattered.

Robertson’s second trial resulted in his conviction on charges of violating EPA regulations. In what is becoming another increasingly common corruption of the Constitution, the guilty verdict forced Robertson out of his home and into a trailer because his wife keeps a gun safe in their home and, as a convicted felon, he is not allowed to have access to firearms!

Robertson faces a sentence of 15 years in prison and \$750,000 in fines, which he insists would cause him to lose his property.

Sentencing in the case of Joseph Robertson is scheduled for July 20, 2016 at 10:00 a.m. at the federal courthouse in Missoula, Montana.

Americans must demand that state lawmakers step into the breach and protect their citizens from being denied their most fundamental rights.

Our Founding Fathers intended that states serve as the ultimate barriers between a frenzied federal government and the people. If those barriers are gone, however, there is nothing that will save the property of all Americans from being seized by these “swarms of officers” with usurped authority whose scope and severity recognize no restraints.



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