



WYOMING STOCK GROWERS ASSOCIATION

Guardian of Wyoming's Cow Country since 1872

President- Dennis Sun, *Casper*

Region I Vice President- JD Hill, *Ranchester*

Region III Vice President- Mantha Philips, *Casper*

Region V Vice President- Reg Philips, *Dubois*

First Vice President- Scott Sims, *McFadden*

Region II Vice President- Steve Paisley, *Wheatland*

Region IV Vice President- Brad Mead, *Jackson*

Executive Vice President- Jim Magagna, *Cheyenne*

Young Producers Assembly- Kendall Roberts, *Cheyenne*

March 10, 2018

TO: Senator John Barrasso, Chairman
Senator Thomas Carper, Ranking Member
Senate Committee on Environment & Public Works

FROM: Jim Magagna, Executive Vice President, Wyoming Stock Growers Association

RE: Agriculture Creates Real Employment Act (ACRE)

TESTIMONY

Chairman Barrasso, Ranking Member Carper and Members of the EPW Committee:

The Wyoming Stock Growers Association (WSGA) appreciates this opportunity to provide testimony on the Agriculture Creates Real Employment Act. WSGA is generally supportive of all sections of the bill. However, we will focus our testimony on Section 3 (CERCLA), Section 10 (SPCC) and Section 11 (Predatory Animals) as these three Sections have the greatest impact on Wyoming ranchers and the most urgent need for Congressional action.

WSGA, with a current membership of over 1100, has represented the livestock industry in the state since 1872. Throughout our history we have responded to both major events impacting the ranching industry while seizing upon opportunities to enhance the economy and sustainability of our producers. While historically weather and cattle rustling may have been the greatest threats faced by our members, today our most pervasive threat is excessive government regulation.

SECTION 3. Exemption from Certain Notice Requirements and Penalties.

This Section would release the Environmental Protection Agency (EPA) from the current Court mandate making continuous emissions reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) applicable to releases of animal waste from our farms and ranches.

When Congress enacted CERCLA in 1980, it clearly did not intend for family farms to be treated as hazardous waste cleanup sites. CERCLA was enacted to provide for cleanup of severe industrial chemical toxic waste dumps and spills, like oil spills and chemical tank explosions. With this in mind, in 2008, the EPA finalized a rule to exempt most agricultural operations from CERCLA reporting, recognizing that low-level continuous emissions of ammonia and hydrogen sulfide from livestock are not "releases" that Congress intended to regulate. Moreover, upon

"Shaping and Living The Code of The West"

P.O. BOX 206, CHEYENNE, WY 82003 • PH: 307.638.3942 • FX: 307.634.1210

EMAIL: INFO@WYSGA.ORG • WEBSITE: WWW.WYSGA.ORG • BLOG: WWW.REALRANCHERS.COM

being sued in 2009, the Obama Administration spent eight years defending this Bush-era exemption.

However, in April 2017, the D.C. Circuit Court vacated EPA's 2008 exemption, concluding that the statutes are unambiguous and that EPA did not have the authority to issue the exemption rule. Since that time, we have had to rely on the Court for delay in issuing a final Order to preclude the immediate need for filings.

By one suggested measure, this continuous reporting requirement would apply to all livestock operations involving two hundred six (206) or more head of cattle. This standard would incorporate the vast majority of commercial livestock operations in Wyoming. As you would clearly understand Mr. Chairman, the task of measuring the toxic release from hundreds of cattle dispersed across thousands of acres on the typical Wyoming ranch defies reality.

In addition, given the diverse patterns of private state and federal land ownership, the pasturing of non-owned livestock on leased or permitted lands and the intermingling of livestock ownership on common allotments, there is real question as to which entity is responsible for the reporting. To date, EPA has been unable to answer that question for us.

Congressional relief from the application of CERCLA as provided for in Senator Fisher's S 2421 and the ACRE Act is of the utmost urgency. We are currently at the mercy of the willingness of the Court to continue to delay issuance of a final order.

SECTION 10. Applicability of Spill Prevention, Control and Counter Measure Rule

In our sparsely populated state, farm and ranch sites necessitating on-site fuel storage are often based in locations at great distances from fuel sources. Our members are dependent on being able to store adequate fuel supplies. While a few ranches have large underground storage capacities, most rely on above ground storage in 500 or 1000 gallon tanks. Several such tanks are often co-located in order to make it economical for fuel suppliers to deliver to these distant operations.

Our industry has been dealing with this issue since 2002. While the Water Resources Reform and Development Act of 2014 provided significant relief from costly requirement for certification by a professional engineer, allowing self-certification for many storage facilities, remaining requirements are still disproportionate to the risks of a spill in many rural areas.

SECTION 11. Predatory and other Wild Animals

Current practices and policies of the FWS and APHIS regarding the issuance of permits for removal or harassment of avian species have become increasingly burdensome for livestock managers. Two particular examples illustrate the challenges that we face.

"Shaping and Living The Code of The West"

P.O. BOX 206, CHEYENNE, WY 82001 • PH: 307.638.3942 • FX: 307.634.1210

EMAIL: INFO@WYSGA.ORG • WEBSITE: WWW.WYSGA.ORG • BLOG: WWW.REALRANCHERS.COM

It was a long-standing practice for APHIS Wildlife Services to obtain a permit for the harassment of eagles interfering with livestock operations in semi-confinement situations. APHIS-WS would then authorize individual ranchers to conduct necessary harassment activities under this permit. Within the past year Wildlife Services has advised us that they are no longer willing to authorize private parties to undertake actions under such permits due to the liability that this imposes on WS. They have suggested that private entities such as WSGA apply directly to FWS for a permit and become liable for any actions taken by our members who are authorized to operate under our permits. I can only describe this to you as “passing the buck.” This is not an acceptable solution to addressing this pressing issue.

A second example involves the taking of ravens. These abundant avian predators are one of the major threats to our western sage-grouse populations. They are often also a significant predator on small lambs. Currently, FWS permits limited takes in Wyoming under a permit to Wildlife Services. In 2015 the Wyoming Game & Fish Department submitted a request to FWS to liberalize the take of ravens. Specifically, the G&F requested consideration of “allowing the public to handle common raven damage/depredation on private land without the need for a permit”. The G&F further expressed interest in a sport hunting season for ravens similar to the sport hunting season for crows and blackbirds.

The FWS responded to our G&F over a year later. They indicated that adding ravens to the crow depredation order would require formal rule-making and NEPA analysis. WSGA and other western states have requested that FWS and APHIS-WS jointly undertake the preparation of an EIS for such authorization. There has been no action on this request.

WSGA thanks you for your commitment to addressing these issues. We stand ready to assist you in moving appropriate legislation through the ACRE act or any other vehicle.

###

“Shaping and Living The Code of The West”

P.O. BOX 206, CHEYENNE, WY 82001 • PH: 307.638.3942 • FX: 307.634.1210

EMAIL: INFO@WYSGA.ORG • WEBSITE: WWW.WYSGA.ORG • BLOG: WWW.REALRANCHERS.COM