

U.S. v. King: It's Time for Some Prosecutorial Restraint

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In the annals of unwarranted federal criminal prosecutions, it would be tough to find a more outrageous case than that of Idaho farmer Cory King, who stands convicted of felony violations of the Safe Drinking Water Act. Like many farmers in his semi-desert part of the state, King had a decades-long practice of injecting melting snows into his irrigation wells. That way, he could ensure adequate irrigation water for his crops during the dry summer months.

His felony? King failed to obtain a permit from Idaho officials before injecting the water. That, no doubt, was a regulatory infraction. King's farm paid a fine to Idaho officials and promised to get a permit before engaging in the practice again.

But three years later, federal prosecutors decided to jump into the act and make an example of King by indicting him on federal charges. Apparently, the Safe Drinking Water Act makes it a federal crime to violate state rules governing wells. Never mind that the water at issue did not run across any state borders and that the irrigation wells at issue have no connection to any drinking water supply. And never mind that Idaho officials decided that the matter should be handled administratively (although they could have charged King with a misdemeanor violation of Idaho law.)

Federal prosecutors could not resist the urge to exert their authority over a matter that traditionally has been regulated under state law. King was convicted on all charges; he is now appealing that conviction in a federal appeals court in San Francisco.

What makes this prosecution particularly senseless is that the Safe Drinking Water Act was adopted to prevent the pollution of water supplies, yet the evidence at trial convincingly demonstrated (and the trial judge so held) that the water King injected into his irrigation wells contained absolutely no contaminants.

The Safe Drinking Water Act includes numerous loopholes that allow oil and gas producers to inject a wide variety of chemicals into the ground without the need for a permit, yet federal prosecutors somehow deem it appropriate to bring felony charges against farmers who try to ensure that they have enough clean water to irrigate their crops.

King is represented on appeal by noted constitutional scholar [Kathleen Sullivan](#), the former Dean of Stanford Law School. (My employer, the Washington Legal Foundation, also filed a [brief](#) in support of King's appeal.) Sullivan argues that federal prosecution for intrastate activities that violated an Idaho regulation exceeded the federal government's constitutional powers under the Commerce Clause. Here's hoping that the appeals court uses this case to impose some reasonable limits on the use and abuse of federal power.

*Cross-Posted at [The Legal Pulse](#).