

**FOR IMMEDIATE RELEASE****February 3, 2012**

COURT URGED TO OVERTURN CONVICTION FOR STORING IRRIGATION WATER

(King v. United States)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to review (and ultimately overturn) the federal felony conviction of its client, a farmer in Idaho who (prosecutors alleged) committed technical violations of an Idaho environmental statute. The farmer each spring took melting snow and injected it into his irrigation wells, to ensure that he had adequate water supplies during the summer to irrigate his crops. Although there was no evidence that the practice endangered any drinking water supplies, federal officials garnered felony convictions based on evidence that the farmer did not obtain all necessary state permits for his well injections.

In its Supreme Court certiorari petition, WLF raised two issues. First, WLF argued that the prosecution exceeded the federal government's powers under the Commerce Clause. WLF noted that the evidence at trial demonstrated that the water at issue was intrastate in nature and contained no contaminants. Second, WLF challenged the finding that the farmer, Cory King, made a material false statement in a "matter within the jurisdiction" of the United States. WLF noted that the statement in question was made to a state agricultural inspector who had no connection to the federal government – and thus was not made in a "matter within the jurisdiction" of the United States.

"The Framers of the Constitution sought to maintain a balance of power between federal and state government as a means of reducing the risks of tyranny and abuse by governments at any level. We are concerned that the federal government is upsetting that balance by seeking to impose criminal sanctions based on activities far afield from the powers assigned to it by Constitution," said WLF Chief Counsel Richard Samp after filing the certiorari petition on behalf of Mr. King. "We are particularly concerned that federal prosecutors reached out to make this a criminal matter when the Idaho rules the defendant is alleged to have violated are normally deemed regulatory matters that are most appropriately addressed in civil proceedings," Samp said.

Mr. King manages a large farm in a semi-desert area of southern Idaho. Like many other farms in Idaho, Double C has a long history (a history that pre-dates King's arrival at the farm) of ensuring an adequate supply of irrigation water by injecting surface runoff water into an aquifer that feeds its irrigation wells. An Idaho statute adopted in 1971 provided that anyone wishing to continue to use injections wells was required to

obtain a permit. But the statute was poorly administered, and many farmers did not obtain the required permits.

Congress later adopted the Safe Drinking Water Act, an environmental statute designed to ensure the safety of drinking water. Because Congress feared that businesses might choose to inject some of their industrial wastes underground, it included in the SDWA a section that addressed underground injections. It provided that every State must establish an underground injection control (UIC) program, and it provided severe criminal penalties for anyone who willfully violates a State's EPA-approved UIC program.

When Idaho officials became aware in 2005 that Double C Farms was using injection wells without a permit, it informed King of the violation, and Double C has been in full compliance with Idaho's requirements since that date. Idaho chose to address Double C's violations administratively, and Double C entered into a consent order that required it to pay a substantial fine. That resolution was insufficient for federal officials, however. In 2008, they indicted King for multiple felony violations of the SDWA. The crime? Violating the *Idaho law* by injecting surface runoff water into an irrigation well without a permit. King was convicted, and a federal appeals court rejected his appeal.

In its petition for Supreme Court review, WLF argued that the SDWA is unconstitutional as applied to King because it exceeds Congress's authority under the Constitution's Commerce Clause. The Supreme Court has held that Congress may regulate local activity under the Commerce Clause so long as it has a "substantial" effect on interstate commerce. WLF argued that King's conduct could not possibly have any effect on interstate commerce, given that: (1) the injected water was intrastate water; (2) those wells were unconnected to interstate aquifers or any source of drinking water; and (3) the trial court determined that the water was uncontaminated.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous federal and state courts in cases raising claims that prosecutors are unfairly seeking to criminalize business practices that, even if technically a violation of some regulatory rule, are more appropriately addressed in a civil proceeding.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.