

CONFIRMATION OF ROBERT CALIFF

Mr. McCONNELL. Mr. President, in the meantime, we took a step forward yesterday by confirming the new FDA Commissioner, Dr. Robert Califf. In a recent meeting with Dr. Califf, I expressed my concerns regarding the epidemic at hand and the need for more action by the FDA.

I was encouraged by Dr. Califf's recognition that the opioid epidemic is a serious problem and the FDA must do a better job of addressing it. Dr. Califf received broad bipartisan support yesterday in the Senate, and we look forward to working with him. I will continue to hold him accountable to lead the FDA in a new direction to help prevent dependence and abuse of prescription opioids.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

OPIOID ADDICTION

Mr. REID. Mr. President, I join the Republican leader on the need to address the scourge of opioid addiction. It is a scourge. That is why it is more important than ever that we back our words with real solutions, real resources.

That is why the amendment by Senator SHAHEEN to the opioid bill will be important. I hope it gets every consideration, and I hope it passes.

FILLING THE SUPREME COURT VACANCY

Mr. REID. Mr. President, I start with a statement the Republican leader made on the Senate floor in 2007: "I will never agree to retreat from our responsibility to confirm qualified judicial nominees."

I wish to repeat: "I will never agree to retreat from our responsibility to confirm qualified judicial nominees."

My Republican counterpart said that. They are his own words.

Fast forward 9 years to today, now. Not only is the senior Senator from Kentucky abandoning his responsibility to confirm a Supreme Court Justice, he is leading the entire Republican caucus to retreat from their constitutional obligation. This is unfortunate because the Republican leader was right 9 years ago. As Senators, we have a responsibility to uphold a number of things, but one certainly is the Constitution. That responsibility is clearly outlined in the oath we take before we are sworn into office—right there. Every one of them has done it. What are we asked to confirm, to swear to? We swear to "support and defend the Constitution of the United States." We swear to "bear true faith and allegiance to the same." We swear to "faithfully discharge the duties of

fice." I wish to repeat that. We swear to "faithfully discharge the duties of office."

One cannot see how Republicans can claim to uphold this oath as they block the President from appointing a new Supreme Court Justice. Senate Republicans are making pledges of a different sort these days. They have vowed to not hold hearings—even though denying a hearings is unprecedented in history. They have sworn not to meet with the President—I am sorry, with his nominee and maybe even him. He has been waiting for word from the chairman of the Judiciary Committee and the Republican leader to find out if they are willing to come and meet with him in the White House. That has been going on for several days now. They have sworn not to meet with the President's Supreme Court nominee, even though they don't know who that person might be. By refusing to hold confirmation hearings for President Obama's Supreme Court nominee or to hold a vote, they undermine the Presidency, the Constitution, and the Senate.

Senate Republicans are known—and have been for some time now—as a set of human brake pads, obstructing, filibustering virtually everything President Obama has had on his agenda, but this raises obstruction to a new level never seen before in this country—the Supreme Court: no hearings, no vote, and yesterday even more. They even refuse to meet with this man or woman who is going to be nominated—no meetings, no meetings with the nominee to the Supreme Court, a person put forth by the President of the United States because the Constitution states he shall nominate. He has no discretion, he shall nominate.

By refusing to even sit or talk with any nominee, they make a mockery of the office to which the American people elected them.

Think about this. Republicans will not do their due diligence by speaking with a nominee to assess his or her qualifications. Meeting with the nominee is basic. Holding a hearing is routine. These things are common sense, so why won't Republican Senators make an effort to uphold their constitutional responsibilities?

U.S. Senators have an obligation to evaluate the Presidential nominations, not only for the Supreme Court but for every nomination that comes forward—but especially the Supreme Court. That means sitting down with the nominee. That means holding hearings to learn about their record and qualifications for the position, and that means a vote.

The senior Senator from Texas said the same about 7 years ago. After Justice Sonia Sotomayor was nominated, the assistant Republican leader told C-SPAN that "my own view is that we ought to come with an open mind and do the research and do the reading . . . and then be able to ask the nominee about them."

What he said, the senior Senator from Texas, is that his view is that we

ought to come with an open mind, do the research, do the reading, and then be able to ask the nominee about them. I agree. The Senate should be able to research the background of the President's Supreme Court nominee and ask any questions they may have about them. Why—why—for the first time in history, do we have this situation? Why do Republicans—the Republican Senator from Texas, whom I just quoted, and all Republicans—refuse to even meet with a nominee?

I say to my Republican friends, you cannot offer advice and consent on a nominee you have never met, never considered. It is impossible. Maybe Republicans are hoping the Supreme Court vacancy will just go away, but it will not. Maybe Senate Republicans think they will only endure a few weeks of negative stories—and there have been negative stories, of course. There are no positive stories that I am aware of saying: That is great. For the first time in history you are not even willing to meet with a nominee. I guess they believe the American people will forget about this vacancy, but they will not.

Democrats are going to fight every day to ensure that this important nominee gets a dignified confirmation process that past Senates have afforded all Supreme Court nominations. I, along with every other Member of the Democratic caucus, will be on the floor next week, the week after that, and the week after that, as long as it takes, to bring to the attention of America the failure of this Republican Senate to meet its constitutional mandate.

Pretending the nominee doesn't exist will not make the Supreme Court vacancy go away. It will not make the President's nomination vanish. Rather, it leaves the American people with a Senate full of Republicans who, as the Republican leader said, are "retreating from their responsibilities." That is what the Republican leader said. Their obstruction of the President's Supreme Court nominee is abdication of the oath my Republican colleagues took when they assumed the title of U.S. Senator.

Once again I tell my Republican friends: Don't run away from your responsibilities, just do your job. Do your job.

Mr. President, will the Chair announce the business of the day.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

WATERS OF THE UNITED STATES
RULE AND FILLING THE
SUPREME COURT VACANCY

Mr. GRASSLEY. Mr. President, I rise for the purpose of showing how one bureaucracy, the Corps of Engineers—and to some extent the EPA working with them—has already made farming very difficult and how, if the waters of the United States rule goes into effect, it can be much worse than even what I am going to be referring to.

Now, I am going to quote word for word a farmer's problem from the Iowa Farm Bureau's Spokesman dated January 27, 2016, and then I am going to make some comments on it.

For that reason, since I am told the next speaker is not going to come until 10:15, I ask unanimous consent to continue until that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, before I start quoting, this is a story about a California farmer by the name of John Duarte, of Tehama County, CA. The title is "One farmer's ordeal may signal agencies' actions under WOTUS."

All John Duarte did was hire a guy to plow some grazing land so that he could raise wheat on 450 acres that his family had purchased in California's Tehama County, north of Sacramento. The land had been planted to wheat in the past. The wheat market was favorable and the farmer made sure to avoid some wet spots in the field, called vernal pools, which are considered wetlands.

But that plowing, which disturbed only the top few inches of soil, unleashed a firestorm from the U.S. Army Corps of Engineers, the Environmental Protection Agency, and other regulators against the California Farm Bureau member. The regulators' actions stopped Duarte from raising wheat, tried to force him to pay millions of dollars to restore the wetlands in perpetuity—although there was no evidence of damage—and sparked lawsuits and counter-lawsuits.

Duarte's experience could well turn out to be an example of how the agencies will treat farmers in Iowa and all over the country under the expansive Waters of the United States rule, according to Duarte, his attorneys and experts at the American Farm Bureau Federation.

"This really shows how these agency actions can play out on a specific family farm," Duarte said recently during a press conference at the American Farm Bureau Federation annual convention in Orlando. "We aren't concerned about it because John Duarte is having a bad time with the feds. We are concerned because this is a very serious threat to farming as we know it in America."

Although the EPA and other agencies continue to say to farmers that the WOTUS rule will not affect normal farming practices, such as plowing, Duarte's case shows that it will, said Tony Francois, an attorney with the Pacific Legal Foundation, which is representing Duarte.

"Anyone who is being told not to worry about the new WOTUS rule, they should be thinking about this case," Francois said. "The very thing they are telling you not to worry about is what they are suing Duarte over—just plowing."

Don Parish, [American Farm Bureau Federation] senior director of regulatory relations, said a big problem is the wide param-

eters that the agencies have placed in the WOTUS rule. He noted the rule is filled with vague language like adjacent waters and tributaries, which are difficult to clarify.

As broad as possible. "They want the Waters of the United States to be as broad as they can get it so it can be applied to every farm in the country," Parish said.

Iowa Farm Bureau Federation and other organizations have worked hard to stop the WOTUS rule, which was imposed last year but has been temporarily suspended by court rulings. The rule was designed to revise the definition of what is considered a "water of the United States" and is subject to Federal regulations under the Clean Water Act.

But instead of adding clarity, IFBF and others contend the rule has only added ambiguity, leaving farmers, like Duarte, facing the potential of delays, red tape and steep fines as they complete normal farm operations, such as fertilizing, applying crop protection chemicals or moving dirt to build conservation structures.

Another problem, Duarte said, is that the agencies are piling the WOTUS law with other laws, such as the Endangered Species Act, to dictate how farmers use their own land or to keep them from farming it at all.

"They aren't just trying to micromanage farmers. They're trying to stop farmers," Duarte said. "They're trying to turn our farmland into habitat preservation. They are simply trying to chase us off of our land."

Duarte, who operates a successful nursery that raises grapevines and rootstock for nut trees, was first contacted by the Corps of Engineers in late 2012. In early 2013, the Corps sent a cease-and-desist letter to Duarte, ordering suspension of farming operations based on alleged violations of the CWA.

The Corps did not notify the farmer of the allegations prior to issuing the letter or provide Duarte any opportunity to comment on the allegations.

The agency, Duarte said, wrongly accused him of deep ripping the soil and destroying the wetlands in the field. However, he had only had the field chisel plowed and was careful to avoid the depressions or vernal pools.

It's also important to note, Duarte said, that plowing is specifically allowed under the CWA. Congress specially added that provision to keep farmers from having to go through an onerous permitting process for doing fieldwork, he said.

Deciding to Fight.

That is a headline.

Instead of capitulating to the Corps, Duarte decided to fight the case in court.

His lawsuit was met by a countersuit from the U.S. Justice Department, seeking millions of dollars in penalties. The case is expected to go to trial in March.

Meaning March right around the corner.

The case, Duarte said, has raised some absurd charges by the agencies. At one point, the government experts claimed that the bottom of the plowed furrows were still wetlands, but the ridges of the furrow had been converted to upland, he said.

In another, an agency official claimed that Duarte had no right to work the land because it had not been continuously planted to wheat.

However, he said, the previous owner had stopped planting wheat because the prices were low.

"They said it was only exempt if it was part of an ongoing operation," Duarte said. "There is no law that says farmers have to keep growing crop if there is a glut and prices are in the tank. But by the Corps thinking, if you don't plant wheat when it is

unprofitable, you lose your right to ever grow it again."

Duarte also noted that when federal inspectors came out to his farm, they used a backhoe to dig deep pits in the wetlands. "If you do that, you can break through the impervious layer and damage the wetland, but it does not seem to be a problem if you are a government regulator."

To date, his family has spent some \$900,000 in legal fees.

Let me say something parenthetically here. If we had to spend \$900,000 in legal fees, the Grassleys might as well get out of farming. Now I want to go back to quoting, so I am going to start that paragraph over.

To date, his family has spent some \$900,000 in legal fees. That is separate from the work by the Pacific Legal Foundation, which represents the clients it takes for free and is supported by foundations.

It would have been easier, and cheaper, to comply with the wishes of federal agencies and given up use of the land. Many California farmers who found themselves in a similar situation have done just that, Duarte said.

Another two-word headline:

Banding together.

However, it's important to stand and fight the agencies' attempt to bend the CWA, Endangered Species Act and other laws to take control of private lands. And it's important for farmers to band together with Farm Bureau and other groups that oppose the WOTUS rule.

"We are not against the Clean Water Act or the Endangered Species Act as they were intended," Duarte said. "But this is not how those acts are supposed to be enforced. We are getting entangled in regulation, and the noose seems to be tighter every year."

I said that I would comment after I read that. For people who may be just listening, I just read an article that ran on the front page of the Iowa Farm Bureau Spokesman. The problems illustrated by this article are all occurring under current law with regard to farmers wanting to make a living by planting wheat in their fields. In the case of Mr. Duarte, government regulations from the EPA and the Corps of Engineers are making his life miserable with the threats of millions of dollars of fines.

As the article stated, regulators at one point tried to claim that "the bottom of the plowed furrows were still wetlands, but the ridges of the furrow had been converted to upland." That is ridiculous. The EPA is out of control.

You might remember the fugitive dust rule of a few years ago. I don't think now they are trying to push it, but the EPA was going to rule that you had—when you are a farming operation, you have to keep the dust within your property lines. So I tried to explain to the EPA Director: Do you know that only God determines when the wind blows? When you are a farmer and your soybeans are at 13 percent moisture, you have about 2 or 3 days to save the whole crop and get it harvested.

The farmer does not control the wind. The farmer does not control when the beans are dry, ready for harvest. When you combine soybeans, you