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Pruitt Corrects Course on Obama-Era Water Regulation

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Scott Pruitt is not so much shaking things up at the EPA as restoring order, as with his decision to rescind the "Waters of the United States" rule — WOTUS, inevitably — which purported to expand the application of the Clean Water Act (CWA) and empower the federal government to regulate essentially any standing body of water and the lands adjacent to it. If you are wondering how bonkers the EPA was willing to be in its interpretation, consider that WOTUS would have applied to wet grass, if the grass had been wet enough.

WOTUS's enforcement already had been suspended by the federal courts, and it will not be missed.

WOTUS had very little to do with clean water. In the words of Zippy Duvall, president of the American Farm Bureau Federation, "It was a federal land grab designed to put a straitjacket on farming and private businesses across this nation. That's why our federal courts blocked it from going into effect for the past two years."

WOTUS is a textbook example of federal mission creep. For years, "waters of the United States" were defined as navigable interstate and coastal waterways, that "are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce."

Under the Obama administration, the EPA expanded the definition of waters under its regulatory jurisdiction to include any body of water that might possibly be used in interstate commerce: For example, a cow pond used to water livestock producing meat that might eventually be sold across state lines became, under the new rules, "jurisdictional," as though it were the Erie Canal or the Everglades. The Army Corps of Engineers language communicates the absurdity of this, describing federal jurisdiction over "mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds," in addition to the familiar navigable waterways.

Wet meadows.

In addition to eliminating WOTUS, the EPA will be reconsidering its definition of which waters are subject to regulation under the CWA, as it should. The EPA is a problem, one resulting from the interaction of two lamentable tendencies in contemporary American government. The first is the elevation of narrowly ideological environmentalism over ordinary quality-of-life concerns such as reducing air pollution and ensuring clean water for drinking and recreational purposes.

For about 25 years, radical environmentalists and responsible environmentalists competed for influence in the major advocacy organizations and, inevitably, in government. The radicals won, and the environmental movement today is not preoccupied with smog or waste-dumping in rivers but instead is engaged in a jihad against capitalism and modern standards of living. There is no oil pipeline that it will not attempt to sabotage, no coal-export depot that it will not attempt to paralyze through litigation, no new recreational use of wilderness areas that it will not attempt to suffocate.

That much should have become obvious during the fight over the Keystone XL pipeline: No environmental easement or precautionary measure was ever going to be enough to satisfy Keystone's opponents, because they oppose oil pipelines per se. That ideology is dominant within the EPA as well, which is why giving the agency an open-ended mandate to regulate irrigation ditches in Nebraska, far from any legitimately interstate or international concern, is a mistake.

The second part of the EPA problem is the out-of-control substitution of agency regulation for statutes passed by Congress. As with health-care policy and much else that is defective in our public policy, environmental laws such as the Clean Air Act and the Clean Water Act have been effectively converted into a series of enabling acts, "the secretary shall" and "the secretary may," creating an enormous body of onerous and sometimes contradictory administrative law enacting federal policies far removed from the substance of the laws actually passed by the democratically elected lawmakers accountable to the people. The federal bureaucrats enjoy their immunity to democratic accountability, and Congress, alas, enjoys shifting its accountability to the unaccountable.

EPA administrator Scott Pruitt has expressed his desire to restore something like the rule of law at the agency, reining in its more ambitious and expansive interpretations of the laws passed by Congress and — radical thought! — hewing instead to what the law actually says, providing what Pruitt describes as "regulatory certainty" to businesses and citizens.

The usual ninnies are shrieking in the expected hysterical fashion. But the fact is, no one is in favor of water or air pollution. At question is whether we ought to treat a wet meadow in Oklahoma the same way we treat Lake Tahoe when it comes to federal regulation, whether the mission of the EPA is, as advertised, environmental protection, or whether it is to be deputized to lead an ideological jihad against modern industrial capitalism. Also at question is whether our laws are going to be made by our elected lawmakers or by unelected administrators in Washington.

Pruitt has chosen wisely here, and has much more work to do in the same vein.

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