Landowners, homeowners, business owners, home builders, construction companies, the forestry and mining industries, and just about everyone else engaged in productive activities in the United States are in the crosshairs of the most far-reaching power grab the Environmental Protection Agency (EPA) has ever undertaken.

In the name of “clarifying” the federal government’s regulatory powers over certain bodies of water, EPA and the U.S. Army Corps of Engineers (Corps) in March unleashed a torrent of regulations designed to give Washington final authority over land-use decisions from coast to coast. The regulations cover “waters of the United States” and are commonly referred to as WOTUS.

EPA contends that its WOTUS onslaught is necessary to clear up “uncertainties” arising from U.S. Supreme Court decisions from 2001 and 2006 that restricted the agency’s authority and cast doubt over the legitimacy of
its schemes to regulate certain bodies of water. Despite losing both cases, EPA now claims that ambiguities in the rulings give it greater authority than ever before to regulate private land and isolated and intermittent bodies of water.

Facing a ferocious backlash from ordinary citizens and from members of Congress representing both parties, EPA has defended its power grab, which is also a land grab, by assuring the public that people have nothing to fear from WOTUS. But the office of Sen. David Vitter (R-Louisiana), ranking member on the Senate Environment and Public Works Committee, has compiled a list of EPA’s claims and compared them with the wording of the agency’s proposed regulations. And to the surprise of no one, their research revealed that EPA is fudging the truth. Here’s what they found:

**EPA says WOTUS does not apply to ditches.**

**Not True:** For the first time, the proposed rule explicitly includes ditches unless they fall within one of two exceptions based on location and flow. Many ditches throughout the country will be unable to meet the rule’s limited exemption provision and thus will be subject to federal Clean Water Act (CWA) jurisdiction under the rule, contrary to EPA’s claims.

**EPA says WOTUS will not regulate activities on land.**

**Not True:** Under the CWA, federal jurisdiction extends to “navigable waters,” which are defined as “waters of the United States.” Water bodies deemed “waters of the United States” are subject to permitting mandates, federal enforcement mechanisms, mitigation procedures, and citizens suits. A wide variety of activities on land require permits when they affect a “water of the United States” including, homebuilding, construction, agriculture, ranching, and mining. The CWA does not provide a guaranteed right to a permit, and if an applicant is denied, that individual or business will be unable to move forward with the planned project, thus allowing EPA and the Corps to dictate the list of permissible land-use activities afforded a particular landowner.

**EPA says WOTUS will not apply to groundwater.**

**Not True:** The rule claims to exclude groundwater, but language in the regulation also states that a body of water may be a “water of the United States” if it has a “shallow subsurface hydrological connection” to other jurisdictional waters. This language suggests that EPA and the Corps may intend to use groundwater as a basis for regulation under the CWA.

**EPA says WOTUS will not affect stock ponds.**

**Not True:** Under the rule, if the stock pond is natural or used for purposes other than those listed by EPA, the stock pond could be considered a “water of the United States.” The rule says ponds are exempt only if they are “artificial” and are used “exclusively” for stock watering, irrigation, settling basins, or rice growing.
EPA says WOTUS does not require permits for normal farming activities, like moving cattle

Not True: More farming activities will require CWA permits under the agencies’ interpretive rule for normal agricultural activities. Included in the interpretive rule is a “prescribed grazing” requirement, so if the federal government does not like the way a rancher grazes cattle, Washington bureaucrats can either force the rancher to get a CWA permit or make him pay up to $37,500 per day in fines.

EPA says WOTUS does not regulate puddles.

Not True: The language of WOTUS is so sweeping that almost any wet area could be considered a “water of the United States.” Under WOTUS small and isolated bodies of water may be considered a “water of the United States” when, in combination with other similarly situated waters, they have a “significant nexus” to a traditional navigable body of water. This provides no effective limit to federal regulatory authority and will encourage litigious environmental groups to sue property owners no matter the intentions of EPA. In fact certain environmental groups are already using the rule’s language to bring citizen suits based on the broad authority WOTUS provides, and there is little reason to believe that puddles will not attract abusive litigation in the near future if WOTUS is allowed to go into effect.

If the proposed regulations are allowed to go into effect, the Obama EPA and the Corps will become lord and master over millions of acres of private land throughout the country.

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