

around to evaluate and to see what the truth is on the global warming issue.

But in the meantime let's go back to the pipeline. I can't think of any argument against it that is overwhelming, and the mere fact that people say they don't like the Alberta sands or the production, it doesn't mean we in the United States of America are going to stop them from doing it because they will just do it and ship it to China.

So we have a huge issue we are concerned with. I can't think of anything I have seen in the past 4 or 5 years that is going to be producing more jobs in America than this issue.

With that, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DAINES). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

PROPOSED WATERS OF THE UNITED STATES RULE

Mr. GRASSLEY. Mr. President, I rise to speak about the issue of EPA regulation of waters of the United States rule. I see it as one of the biggest power grabs by an agency in a long time—particularly the EPA.

Before I speak on that issue, I wish to bring attention to some headlines that appeared both in Iowa and nationally on this issue. I will quote the Wall Street Journal: "Watch Out For That Puddle, Soon It Could Be Federally Regulated."

The next quote is from an Iowa Farm Bureau spokesman: "Water rule is really about control of land."

The next quote is from a Farm Bureau spokesman: "Water rule intrudes on property rights, hurts conservation."

Farm Bureau spokesman said: "EPA proposal would regulate all water wherever it flows."

Farm Bureau spokesman: "Water rule threatens U.S. agriculture."

The last quote is also from the a Farm Bureau spokesman: "Rule is threat to conservation momentum . . . a flood of red tape."

Last spring the EPA and Army Corps of Engineers published a proposed rule to define "waters of the United States." This is part of a long history of attempts to determine the scope of the Federal Government's jurisdiction under the Clean Water Act. The latest proposal has generated no shortage of

rhetoric from those concerned about the rule as well as those defending the rule. However, you would be hard pressed to call it a true debate.

Rather than making a serious attempt to address the numerous legitimate concerns with the rule, the Environmental Protection Agency and their allies in the professional advocacy community have attempted to push a narrative that tries to portray critics of the rule as misinformed, nutty or in favor of water pollution.

They, the advocacy community, claim the rule simply clarifies the jurisdiction of Federal agencies, and they also claim it does not expand that jurisdiction in any way. The EPA also promises that it will not interfere with the farmer's routine use of their own land.

Given its history of ignorance and indifference toward the needs of rural America, it is no wonder EPA's assurances are met with skepticism by many in America, but it is particularly met with skepticism by America's farmers.

The EPA will have another chance to consider the concerns of farmers and many other Americans as it reviews the formal comments it collected before issuing the final rule. Still, given the fact that EPA officials—starting with Administrator McCarthy—went out of their way to be dismissive of legitimate criticisms even while the comment period was still open, I am not going to hold my breath hoping for a change of heart on the part of the EPA.

First, it is important to understand that this debate is not about whether we should have clean water protections but which level of government is in the best position under our laws, and the intent of those laws, to manage which bodies of water.

Despite what some interest groups would have you believe, no one is arguing that farmers or anybody else should be allowed to dump pollutants in the waterway. There is also no question that there is a very important role for the Federal Clean Water Act to protect interstate bodies of water.

However, the Clean Water Act itself clearly states:

It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter.

That is in the law right now, and it has been there a long time. The complicated Federal clean water permitting process is appropriate if a factory is looking to discharge waste into a river, but does it make sense to require a farmer to apply for a Federal permit to build a fence on his own land?

There is clearly a limit to where Federal regulation is appropriate, where Federal regulation is effective, and where Federal regulation is legal. In

fact, expanding the cumbersome Federal permitting process to cover lands it was not designed for would actually be counterproductive in my State of Iowa and probably a lot of other States as well.

Forcing farmers to file for a Federal permit would add significant redtape for Iowa farmers as they make routine decisions about how best to use their land. Ironically, that could delay or deter farmers from undertaking projects to improve water quality, and that is why I quoted some members of the Farm Bureau earlier.

There was one story that very specifically said farmers in Iowa were willing to spend a lot of their own money to do some conservation practices that everybody would be very happy with, but they are not going to spend their own money because they cannot even get an answer from the Corps and the EPA on whether they even need a permit. They are not going to pursue their conservation practices and invest all of their money if they could be violating a law, so you can see why they are very upset. Under the existing law, the EPA cannot even tell a farmer whether they need a permit, and they want to assume a lot more responsibility. It is kind of concerning considering that they cannot do their job right now.

Having to constantly apply for Federal permits just to farm their land would be unnecessarily burdensome to farmers, a waste of Federal resources, and an intrusion on State and local land use regulations. What about the EPA's assertion that its proposed rule simply clarifies its existing jurisdiction and restores it to what it used to be? The fact is that in the past, the EPA has attempted to claim nearly unlimited jurisdiction well beyond what the law says and well beyond even an expansive reading of the Federal Government's constitutional authority to regulate interstate commerce. However, those attempts were repeatedly struck down by our U.S. Supreme Court.

The Court decisions in 2001 and 2006 made very clear that the Federal Government does not have unlimited authority over all bodies of water but left the precise division between State and Federal or local jurisdictions somewhat unclear.

In response, the U.S. Army Corps of Engineers and the EPA issued guidance in December 2008 in an attempt to comply with the Supreme Court's rulings but did not engage in any formal rule-making. Significantly, legislation was routinely proposed in Congress by those who wanted to push aside the Supreme Court rulings and give the EPA unlimited jurisdiction, but it never garnered enough support.

While legislation would not have resolved the constitutional limitations to the EPA's authority, it is important to know Congress passed on several opportunities to amend the Clean Water Act to expand Federal jurisdiction.