

Laxalt Opposes EPA's Unconstitutional Power Grab

By Adam Paul Laxalt, 33rd Attorney General of Nevada.

Few states feel the importance of water more keenly than Nevada, where cities and towns are surrounded by high sierra and desert landscapes. But agriculture, industry, and nature can all thrive here, even in the midst of a severe drought, largely because our delicate ecosystem is regulated and maintained at the local and state levels, where citizens consult their elected representatives and express their needs to listening ears.

Federal regulatory agencies think they can do better. Unfortunately, that's not surprising. What is surprising is the astonishing scope of a new federal "waters of the United States" rule recently published by the EPA and Army Corps of Engineers. Left unchecked, the new rule extends federal regulatory power over vast portions of Nevada, displacing state and local governments as the primary regulator of intrastate waters. That is why I, on behalf of Nevada, joined a dozen other states in a bipartisan legal challenge to this federal executive power grab.

Reading the rule, it is hard to tell what would *not* qualify as a federally regulated "water of the United States." Rain-filled ditches and some irrigation channels may now be covered, as well as seasonal streams connected to navigable waters only once a century. If that wasn't enough, the agencies created a new category for "other waters," allowing them to exert jurisdiction on a case-by-case basis.

The only waters that will clearly escape federal embrace are those included in the rule's short list of exemptions. "Puddles" made the cut. But the fact that puddles even needed an exemption demonstrates how broad the federal definitions are.

These interpretations may seem like legal jargon, and they are, but they have the potential to produce a host of practical problems. For newly covered waters, individuals must spend time and resources to secure onerous pollutant discharge permits and local authorities will need to further regulate these so-called "waters of the United States."

The latest federal waters rule is the product of a historical tension between federal agencies and the Supreme Court. The exact legal meaning of "waters of the United States" has never been crystal clear. Taking advantage of the ambiguity, federal agencies have tried to push the term to its limits. Twice in the past fifteen years, that has landed them on the losing side of Supreme Court cases. This is their latest attempt to circumvent those rulings.

Of course, while federal agencies play with words in Washington, their actions have real-life consequences for states and their citizens. The last "waters of the United States" case before the Supreme Court involved a citizen who faced more than five years in prison and hundreds of thousands of dollars in fines just for disturbing wetlands on his property. To fight this, he had to spend more than twelve years in court.

The consequences of federal overreach are real. That is why my office and I continue to diligently fight to preserve our constitutional balance of power. And that is why Nevada, joined

by republican and democrat states in the American west, is challenging the waters of the United States rule.