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crime. In a society dealing with the effects of fatherlessness, broken families, dysfunctional communities, etc, Proposition 19 sends the wrong message and puts children even more at risk. Yes, the drug war has been largely unsuccessful, but throwing in the towel by legalizing a harmful drug is the wrong answer. CPR



## The Law

### Wanted: clean water

*Not micromanagement of our land*

BOB L. VICE

**K**eeping America's waterways and water supply clean is a crucial goal. So is guarding against federal micromanagement of our lives and property. Unfortunately, a push is on to use the cause of clean water as an excuse to unbalance our federal system and undermine our liberties by concentrating regulation of land use in Washington, D.C. The proposed "Clean Water Restoration Act" was the first legislative salvo in this campaign. Unveiled in 2007, the CWRA was reintroduced in the senate last year by Senator Russ Feingold, D-Wisconsin. With a simple semantic change, it would usher in unprecedented centralization by giving federal officials the powers of a national zoning board.

Under the current Clean Water Act, federal authority extends to "navigable waters" — rivers, lakes and oceans. The CWRA would erase the word, "navigable," substituting the far broader phrase, "waters of the United States."

"This change would subject every pond, puddle, and ditch to control from Washington," observes attorney Reed Hopper, my colleague at Pacific Legal Foundation, a legal watchdog organization for property rights and limited government. In 2006, Hopper won the landmark Clean Water Act case of *Rapanos v.*

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*United States* at the U.S. Supreme Court. It reined in officious federal bureaucrats who were second-guessing property owners even where no navigable waters were present. The CWRA is an attempt to overturn *Rapanos* and lift restraints on federal regulators. They would be licensed to issue orders on private property across the country, without having to show any connection to navigable waters.

**B**ipartisan opposition to this power grab has stalled it in the U.S. senate, at least for now. But a new, parallel effort was recently introduced in the House by Representative Jim Oberstar, D-Minnesota. Its title is different and has a feel-good ring: "America's Commitment to the Clean Water Act." But the aim is the same: federal control of land use.

Unlike Feingold's measure, the Oberstar bill includes a nod to the constitution's limits on federal power. The measure says it would federalize waters only where there is a connection to "interstate commerce." But it goes on to state that all water, everywhere, can fit this definition. Even "geographically isolated" water, if polluted or "degradat(ed)," can have "a substantial relation to and effect on interstate commerce."

"The Oberstar legislation," Hopper says, "is so broad that the only practical limit is the regulators'

own subjective judgment — in other words, no limit at all. Federal bureaucrats could control virtually any wet spot in the country, and much of the surrounding land." Both bills take aim at the historic American understanding that land use regulation should generally be entrusted to local communities and their elected leaders. Everyone who owns property should be concerned, but farmers and ranchers have special reason for worry. Flooding, droughts, freezes, windstorms — these natural challenges go with the territory for people who devote their lives to the land. But red tape blizzards are another matter. If you don't have a river, lake, or other navigable water on or near your land, the feds shouldn't have a veto over how you operate your farm or ranch.

Farmers and ranchers need a clean water supply. Across the country, including in my own state of California, they already work with state and local agencies to protect water purity. Adding federal layers of bureaucracy can mean redundancy, inefficiency, and significant, unnecessary expense in both dollars and time. The federal permitting process is costly. One study, cited by Justice Antonin Scalia in the *Rapanos* decision, reported that even small fill projects cost nearly \$30,000 and take more than 300 days to process, while larger land-use projects cost more than \$271,000 and require an average of 788 days. The Army Corps of Engineers has been known to insist on

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permits for even basic agricultural work, such as the discing of farmland.

The federal government has a vital role to play in guaranteeing clean water. But its proper focus is on rivers, lakes, streams, and wetlands that actually are integrated with navigable waters. Common sense, tra

ditions of local control, and constitutional principles of federalism all say that isolated waters — and routine land-use decisions on most private property — are matters for state and local oversight, not dictates from Washington, D.C.

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# Those in power over us

## Beware: Obama knows exactly what he is doing.

*The party of 'no' must de-fund, but carefully.*

BY LEWIS K. UHLER

It is now popular among conservatives — and tea partiers — to revel in Obama's political mistakes on the economy and the potential shelacking he and his party will receive this November for separating themselves from mainstream America. We are now talking confidently about taking over the House and aggressively de-funding Obama-Care and many other federal spending programs.

Not so fast. Obama is a brilliant student of Saul Alinsky politics: *Rules for Radicals*. The political assumption is that he has made terrible political mistakes, that will bring down his "colleagues" in the senate and house as collateral damage to his lack of political wisdom and experience. The reality is: Obama doesn't care a whit for his "fellow" Democrats' political survival. They are expendable. They have enabled him to make radical changes in America — ObamaCare, financial "reform," restoration of classic welfare. And he will await major Republican mistakes over the next two years to be able to run successfully for a second term so he can continue to dismantle the America he hates.

His stimulus packages and other "job creation" efforts have "failed." But look at this from Obama's point of view: he has been brilliantly successful, adding

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federal public-employee union jobs that pay big political dues to his labor friends — *ditto* for the billions he's pumped into teacher and state and local government unions. These are his political allies; they sustain him.

Take over Detroit and save the united auto workers unions and their pensions. Add months of unemployment "insurance" to make more people dependent longer (even his own former economic advisor, Lawrence Summers, has written of the adverse effects of unemployment insurance on re-employment of workers). Convert student loans from private banking jobs to government union jobs. Explode welfare by dismantling the highly successful "welfare-to-work" act of '96, and thereby expand the political union dues-paying cadre of welfare workers and broaden the base of people dependent on government. Fundamentally change the American way of life through EPA, SEC, FCC, and FDA administrative rulings by the and a myriad of other executive agencies.

It appears Obama is perfectly content to see a repeat of 1994 when Newt and company took over control of the house with a huge win of 54 new Republican seats. Obama expects that Republicans will over-reach with a "Contract-for-America" approach and, as with Clinton, that he will be re-elected in a wave of concern over Republican congressional actions and policies.

We can win the battle of 2010, yet lose the limit-