



Trump's deregulatory disregard for law and science

BY WILLIAM W. BUZBEE AND MAŽEIKA PATRICIO SULLIVAN, OPINION CONTRIBUTORS — 08/31/20 12:30 PM EDT
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Despite political tumult and pandemic struggles, and perhaps due to the election season's arrival, the Trump administration has been especially busy with regulatory rollbacks. These rollbacks highlight key components of the administration's deregulatory playbook and the costs of its disregard for law and science.

While presidents have some latitude to choose their priorities, they cannot rewrite the law by fiat, or with mere orders to executive branch agencies. Under the Constitution, presidents must ensure agencies "faithfully execute" the nation's many laws, including those protecting health and the environment. Furthermore, longstanding law requires honest and thorough agency grappling with the best available science, critical public comments and analysis of impacts of regulatory choices. So how has the administration done?

In a recent peer-reviewed [article](#) in Science, we analyzed the claimed rationales, legal infirmities and wide-ranging environmental harms of the Trump administration's recently implemented [Navigable Waters Protection Rule](#) (NWPR). The rule addresses the critically important issue of what "waters" are federally protected under the Clean Water Act. In developing it, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers, under Trump, disregarded both law and science.

The preceding Obama administration's protective Clean Water Rule (CWR) was based on close analysis of statutory language, case and regulatory

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law and on a publicly vetted [report](#) compiling the best peer-reviewed science on the functions and services provided by the nation's waters. Although "waters" jurisdiction is now a divisive political hot potato, the CWR's goals were consistent with decades of bipartisan efforts to protect the immense value of waters that are safe for drinking, recreation, agriculture and the nation's ecosystems. It followed the Clean Water Act's [mandate](#) that regulators protect the "chemical, physical and biological integrity" of the nation's waters.

The Trump administration, in contrast, turned a blind eye to the science on how water connects landscapes, from ridges-to-reefs, thereby both performing ecosystem functions and providing ecosystem services, including water quality improvement, flood control and fish and wildlife support. The administration relied heavily on a minority Supreme Court [opinion](#) that itself ignored statutory goals and scientific evidence, focusing instead on permanent flows and connections between waterbodies, while downplaying protective criteria endorsed by court majorities.

The result? The new rule eliminates protections for millions of miles of streams and acres of wetlands across the United States. The rule exacerbates harms from increasingly frequent droughts, contaminants, algal blooms and other stressors that are often exacerbated by climate change. EPA's own data suggest any rollback is a terrible idea, showing poor conditions in [nearly half](#) of our rivers and streams and [one-third](#) of the nation's remaining wetlands. And EPA's own Science Advisory Board [criticized](#) the rule's inconsistency with science.

With this federal shrinkage of "waters" protection, and the likelihood that many states will be unable or unwilling to step into the breach, pollution can now be dumped with impunity into many previously protected waters.

Climate change is also largely ignored in the NWPR, a huge issue for arid environments like much of the American West, where water conservation and protection are even more essential. For example, over [81 percent of streams](#) in the arid and semi-arid Southwest are intermittent or ephemeral, meaning they only flow seasonally or after precipitation events. Many of these important systems will now be excluded from federal protection, including most of the small creeks that flow into the Grand Canyon. Due to intensifying groundwater use and climate effects, the number of newly excluded waters will grow.

We see this same dangerous combination of disregard for law and science in other recent actions. This month's [methane rollback](#) for the oil and gas sector similarly used questionable data and science, also raising new legal hurdles for future regulation. The Trump administration recently weakened long standing requirements that federal agencies disclose environmental risks of their actions and approvals under the [National Environmental Policy Act](#). And broad grants of [pollution compliance waivers](#), supposedly due to COVID-19, have allowed unmonitored pollution.

Furthermore, the Department of Energy just proposed [rolling back](#) shower head flow efficiency regulations, responding to President Trump's complaints that shower head regulation destroyed his ability to wash his "[beautiful](#)" hair. The new proposal ignores investments in meeting the 2013 rule it replaced, jurisdictions dependent on water conservation, engineering innovations, or energy and climate effects of the 2013 regulation proposed for the scrap heap.

As seen with the rising body counts from the botched response to COVID-19, anti-regulatory presidential leadership that disdains science causes real harms. Many environmental rollbacks have rightly been judicially rejected — and these may be too — but regulatory rebuilding that respects law and science will be an essential task for a new administration.

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