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Farmshine Editorials



'Farming looks mighty easy when your plow is a pencil and you're a thousand miles from the corn field.'

- Dwight D. Eisenhower

Does anyone believe America has a crisis?

I know how Robert Brace feels; what's your opinion? What can you do?

I suspect that a majority of Americans would answer the headline question in the affirmative. Some might even respond with a whole list of worrisome policies and developments. Take your pick; the list could get fairly long, with the government being a part – if not source – for much of it.

A relative of mine once made the comment that the U.S. government is in reality no better than that of a totalitarian state. While I personally beg to differ with that opinion, the argument he made is that our "democratic" government is merely much more sophisticated and sneaky in imposing its will on its citizens. He explained further that our government operates slowly for the purpose of deception and confusion. Hidden agendas are moved forward stealthily so that they're hardly noticeable. As he sees it, we are in the "slow cooker" while people in places ruled by outright thugs can have their rights taken away overnight.

I take offense to such a notion, don't you?

But could there be some truth to the suggestion?

A world-renowned, globe-trotting attorney based in Manhattan is convinced that it's true. A smorgasbord of international law is his trade ... but as a sideline passion, he vigorously defends property rights in the United States. A conversation with him leaves no doubt where he stands. He has seen case after case of American farmers slowly losing their rights to farm ... one farm at a time. Not an entire country's farmers stripped of their property in one swoop as it was under Stalin and his cronies throughout eastern Europe, not to mention other places around the world. No, here in

America it's a slow process complete with astronomically expensive, exhaustive and drawn-out court procedures. But it produces the same results.

For Robert Brace and his family of Waterford, Erie County, Pennsylvania, that "slow cooker" process has been going on for three full decades. Contemplating the grueling practices, he once quipped: "I wish they would have just shot me and taken the farm, like they did in Russia."

Quite understandably, he's very frustrated with the way his case has been handled. He has produced all the proper permits and documentation and shown proof that he has consistently operated according to the laws of the land. Judges have ruled in his favor; agencies have agreed he's right. But never for long. Some people with authority -- right or wrong -- possess bull-headed determination to break Mr. Brace and then use his case as a precedence to guide similar cases in the future. To Mr. Brace and his attorneys, it's a clear-cut, drawn-out and cruel way for the federal government to take private property. And it's also a blatant violation of the Fifth Amendment to the U.S. Constitution which reads (in part):

"... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Mr. Brace feels that he has been forced to abandon 30 acres of his property without receiving the "just compensation" required by law.

That doesn't seem to matter to the less-than-fair-minded

folks in federal agencies, whose rules, regulations and powers are often unchecked, unrealistic and unfair. Furthermore, those rules and regs can be re-written or re-defined to suit their wishes and agenda. If that's not operating in totalitarian style, then what is?

The United States Senate Committee on Environment and Public Works released a 38-page report on September 20, 2016, which noted the over-reach of the government. You will positively be amazed at its findings, which are far too numerous and long to include here. The title alone is quite lengthy:

From Preventing Pollution of Navigable and Interstate Waters to Regulating Farm Fields, Puddles and Dry Land: A Senate Report on the Expansion of Jurisdiction Claimed by the Army Corps of Engineers and the U.S. Environmental Protection Agency under the Clean Water Act.

Executive Summary

Case studies presented to the Senate Environment and Public Works Committee demonstrate that the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) new regulation defining "waters of the United States" (WOTUS), promulgated on June 29, 2015, will codify many of the most extreme overreaches of federal authority asserted by these agencies.

Although the new regulation is currently stayed, pending the outcome of litigation challenging the rule, these case studies demonstrate that assurances given by EPA and the Corps regarding the scope of the WOTUS rule and its exemptions to the positions taken by these agencies in jurisdictional determinations and in litigation are factually false.

The following conclusions can be drawn from these case studies:

- EPA and the Corps have and will continue to advance very broad claims of jurisdiction based on discretionary authority to define their own jurisdiction.

- The WOTUS rule would codify the agencies' broadest theories of jurisdiction, which Justice Kennedy recently called "ominous."

- Landowners will not be able to rely on current statutory exemptions or the new regulatory exemptions because the agencies have narrowed the exemptions in practice and simply regulate under another name. For example, if activity takes place on land that is wet:

- plowing to shallow depths is not exempt when the Corps calls the soil between furrows "mini mountain ranges," "uplands," and "dry land;"

- discing is regulated even though it is a type of plowing;
- changing from one agricultural commodity constitutes a new use that eliminates

- the exemption; and
- puddles, tire ruts, sheet flow, and standing water all can be renamed "disturbed

- wetlands" and regulated.
- If Congress does not act, the newly won ability to challenge Corps jurisdictional determinations and claim exemptions will be moot because the WOTUS rule establishes jurisdiction by rule that will extend to all the activities described in the case studies.

(End of Executive Summary)

We should note here, that despite the fact that President Trump sent the WOTUS rule back to the shop for an overhaul, that executive order has not rescued the Brace family from their agonizing, 30-year court struggle with the Army Corps of Engineers, Environmental Protection Agency and Department of Justice. Mr. Brace only wishes that would have been the case. Hold-overs from the Obama Administration

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