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Analyzing the Debate Surrounding Clean Water Act Jurisdiction: A Use of the ACF for Decoding American Environmental Policy Stalemates

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ABSTRACT

Since the enactment of the Clean Water Act in 1972, waters in the United States have continually improved in quality. However, wetlands—and what constitutes a “navigable” waterway—have not been clearly deemed jurisdictional or not by the CWA. Recently two Supreme Court cases have brought to light these inconsistencies in the Act’s wording and sparked a congressional debate—and a resulting stalemate—surrounding the reach of the Clean Water Act. In this paper, I use the advocacy coalition framework to study arguments on either side of the debate to better understand why the stalemate has continued lasting in congress despite both sides acknowledging the harm caused by the stalemate. Through this analysis, I find that there are two distinct sides to this debate, with both sides sacrificing their progress in an attempt to bog down the opposition, an approach that I propose calling “win-and-loss policymaking”. Using these observations, I provide suggestions on how to clear stalemates that hurt the general population in an increasingly hyper-politicized world.

INTRODUCTION

To the average American, wetlands may seem more like a nature preserve. They seem like bug-infested marshes with little to no use for recreation. However, wetlands are imperative to life on Earth. They recharge underground aquifers, promote good water quality, and provide

stable breeding grounds for many species of frogs and waterfowl. These vital arteries are found all over the United States, but some of the largest concentrations of wetlands are found in the Everglades in Florida, swamps of Louisiana, and marshy areas around the Great Lakes. In fact, these wetlands are so interconnected with water that the draining of the Ogallala aquifer in the plains region can be explained partly by the massive degradation of the area's wetlands. As agriculture industries in the plains region get somewhere along the lines of 60-80% of their irrigation water from the Ogallala, this is no doubt a serious environmental issue (Savoie, 1983).

Since wetland acreage numbers have been recorded, it is estimated that only about half of the wetlands indigenous to the United States still remain today. On a yearly basis, the United States loses an area of approximately 60,000 acres of wetlands to developers looking to transform them into a number of more profitable enterprises (Esty, 2007). At the forefront of this degradation are developers. Looking to increase profits, developers select lower quality lands—like wetlands—and buy them for cheap. The problem with this method is that a developer may not entirely know if the land he or she has purchased falls under jurisdiction of the Clean Water Act, Section 404 set forth by the Environmental Protection Agency. The wording of the act prohibits damaging, dredging, or filling any waters deemed “navigable” (or at a “significant nexus” with navigable waters) by the ruling authority, the EPA. This phrase appears over and over in the act, as many of the clauses and prohibitions hinge upon this definition of navigability. However, nowhere in the wording of the CWA does the EPA set forth a scientific and measurable test for navigability. This leaves the definition of navigable waters up to the distinction of the individual (Clean Water Act, 1972). Soon, the meaning of the word “navigable” came under fire in many Supreme Court cases. Arguably the most prominent of these cases was *Rapanos v. United States (2006)*. In this case, the jurisdiction of the Clean Water

Act was fought by a couple of land owners from the Eastern side of Michigan. The owners proposed to build homes on three different tracts of land in Michigan, all of which were deemed “navigable waterways” in the EPA’s record keeping system, meaning the owners should have purchased wetland degradation permits from the EPA before building. The owners, seeing no standing water and being uninformed of the area’s wetland status, decided to dredge and set a foundation for the homes. They soon faced stop work orders, and would have to pay large fines if they didn’t undo all of their dredging. Understandably furious, the owners decided to sue the EPA over their interpretation of “navigable” water. After much debate, the case ended with a 4-1-4 split vote at the Supreme Court. The court opinion, released after the split decision, offered only one conclusion; the court could agree that CWA jurisdiction lines had to be drawn more clearly, but couldn’t agree where (Richey, 2006).

This leads to a very interesting policy problem. Every government entity could agree on the fact that jurisdiction lines needed to be cleared up, but none could agree on the proposed extent of the EPA’s reach. This does not only pertain to the Supreme Court, as the U.S. Senate has recently arrived at a stalemate regarding this policy as well. One side seeks to expand the reach of the EPA, while the other seeks to reign it in (Jalonick, 2015). In this case, we can say with confidence that simply being in the stalemate is an incredibly large policy issue that, if left alone, could lead to the degradation of more and more wetlands. While in this stalemate, the fact remains that the CWA wording is unclear. What is navigable or not remains up to the discretion of many different entities. This gives developers an excuse to dredge and fill wetlands, as they can simply bring the EPA’s wording to court and have a good chance at another no decision, leaving the EPA powerless. The purpose of this research paper is to examine both sides of the argument surrounding the reach of the CWA, and analyze how these arguments fit into the

Advocacy Coalition Framework used to study political stalemates. With this understanding of the different actors at play, I hope to gain knowledge as to why this policy stalemate persists, even though both sides acknowledge the importance of resolving the issue.

LITERATURE REVIEW

The arguments for and against the expansion of the CWA jurisdiction are varied, and the supporters of each side seem to show no specific pattern of political affiliation. In this literature review, I examine some arguments for the expansion of the CWA, some arguments against it, and the underlying theory of the Advocacy Coalition Framework.

1. Support for Expanded CWA Jurisdiction

The want for expansion of CWA jurisdiction can be rationalized by tracing back into the history of the EPA, and examining patterns in decision making. Back in the 1970's, the United States was considered a water quality disaster. One example of this was the fact that the Ohio River caught fire during this period due to dangerously high flammable contaminant levels. At this point in history, pollutant discharge laws were not very detailed and thus, easy to skirt. The EPA passed the Clean Water Act in 1972, and the turnaround in water quality was immediate. Some at the time hailed it as the largest and most important step forward in environmental legislation to date. The EPA, concerned that their act would be skirted as well, erred on the cautious side. They required discharge permits for the release of any pollutant into U.S. navigable waterways, and made these permits difficult to obtain. Throughout the later years, the EPA found its rule challenged time and time again based on the definition of the word "navigable". Courts routinely commented on the fact that the EPA's wording was unclear and far too broad. The EPA and the Senate Committee on Public Works responded by claiming that they

had left the wording broad on purpose, as to allow for more case-by-case review, which was to be carried out the Army Corps of Engineers, a partner with the EPA in wetland compliance (Johnson, pgs. 307-308). After the highly publicized *Sackett v. EPA* case, the courts again could not agree on the line where jurisdiction could be drawn. However, they could agree on two things; the only way to interpret the CWA is through a narrow point of view, and the EPA's compliance orders could be challenged in a civil action. The current wording of the act leaves too much subjectivity, and should be cleared up as to avoid confusion and continuing law suits (Johnson, 2013). This rationalizes the stance taken by the EPA, as they would understandably want to err on the side of caution again. After all, it was this caution that led to the wide success of the original CWA in 1972. The clearing up of the CWA, in the eyes of the EPA, would come with a clearly worded expansion of jurisdiction.

On the more scientific and detailed side, the support for the expansion of the CWA comes mostly from the theory of connectivity. Two types of watershed connectivity come into play when one talks about the interconnectedness of waterways. Upstream-downstream linkages are the highest contributors to watershed connectivity within wetlands and streams. Tributaries to larger streams can greatly affect the integrity of larger streams both physically and chemically (Alexander, 2015). In areas of standing water—like wetlands, lakes, and floodplains—we see large degrees of chemical similarity between neighboring bodies of water, even if they are not physically connected above ground. This intense importance of connectivity has led many environmental scientists to promote a better understanding of the phrase “significant nexus” in the CWA. According to the scientists, categorization of watersheds at a significant nexus could, and should, be done. However, since these scientists are not policymakers, they came up with very few ideas on how to implement this categorization. In response, the EPA came up with their

idea of a “significant nexus test”, which relies on science, but also has some subjective wording. In the Clean Water Act itself, the EPA stated that implementation of the act would rely “also on their technical expertise and practical experience in implementing the CWA during a period of over 40 years” (Clean Water Act, 1972). As a whole, the scientific community agrees with the EPA’s significant nexus test, and what it tries to accomplish (Alexander, 2015). However, it is the inherent subjectivity that gained attention from most of the opposition. The nexus test and its implementation have been used as ammunition against the EPA since it enacted the CWA.

2. Opposition for Expanded CWA Jurisdiction

The rulings of the Supreme Court in *Sackett* and *Rapanos* brought to light the fact that the EPA missed the mark for clarification when they enacted the original CWA. They could have very well replaced “navigable waters” with “waters of the United States” and eliminated the need for a navigability test. Additionally, the phrase “at a significant nexus” was deliberately left open to interpretation by the EPA and the Army Corps of Engineers (ACE). This test was intended to be carried out by environmental scientists, but this came under fire from the side that viewed the expanded CWA jurisdiction as a land grab by the federal government. These tests would need to be carried out by arbitrary, non-political-affiliated scientists on a case-by-case basis. Opponents of the rule argue that this is not only a waste of time and money, but finding a scientist who will favor a business over the EPA is virtually impossible (Adler, 2015). This opposition for the test, and desire for dialed back jurisdiction is especially apparent in the fossil fuel industry.

The shale oil industry has continually shown staunch opposition to the expansion of the CWA. Members of this industry bring up the point that the nexus test is not only subjective, but it lacks quantitative certainty. In the wording of the test, a watershed must have “more than speculative or insubstantial evidence” of connectivity. How much “more than” does a scientist

have to be sure? How can a scientist justify watershed connectivity on a purely qualitative basis?

Project engineers and foremen in the shale oil industry are repeatedly finding that scientists performing the nexus test will very often conclude that a watershed is under CWA jurisdiction based on very slight evidence. It is virtually impossible for a company in this industry to guess correctly if their land will fall under jurisdiction, and thus very costly if the company guesses wrong. These companies are seeing the expansion of CWA jurisdiction as an attempt to make it impossible for their industry to survive, and a slow land grab attempt made by the EPA.

Essentially, this side argued that the EPA would either get increased income from permits, or “free” land to use as a nature preserve (Arthur, Seekins, Winter, and Alleman, 2014). These two opposite ideals find themselves engaged in a congressional, economic, and judicial stalemate. With neither side willing to budge, it becomes imperative that we uncover the workings of a policy stalemate.

3. Workings of Congressional Stalemates

There are various criteria for a congressional stalemate to occur surrounding a policy issue. Katz’ theories of stalemate criteria were drawn from an analysis on another policy stalemate in the United States, the argument over the storage of spent nuclear fuel. Throughout the research, Katz gives detailed reasoning behind the criteria, and generalizes them to all policy stalemates in the United States. The first criteria for a policy stalemate is a multi-party governance system. The United States obviously fits that criteria, as they subscribe to a (mainly) two-party system. Another criteria for a policy stalemate is when a problem is complex and unprecedented. In the case of the CWA, this issue is incredibly complex. No two river systems are alike, and the sheer scope of the act encompasses the entire United States. A final criteria for a policy stalemate is a problem that is growing in both severity and cost. When one or more of

these criteria are met, the government tends to attempt a quick-fix act. Since the government is usually a slow-moving machine, these are often not-well-researched proposals. These proposals are usually very divisive, and frequently tend to get stuck in stalemate. Coupled by the effects of the multitude of interest groups that vary widely in position, these policy stalemates can grow to encompass a wide array of people (Katz, 2001). This idea does explain the starting of a stalemate, but when both sides agree that being in the stalemate is hurting, why can't the government reach a consensus? This question frames the theory of the Advocacy Coalition Framework (ACF)

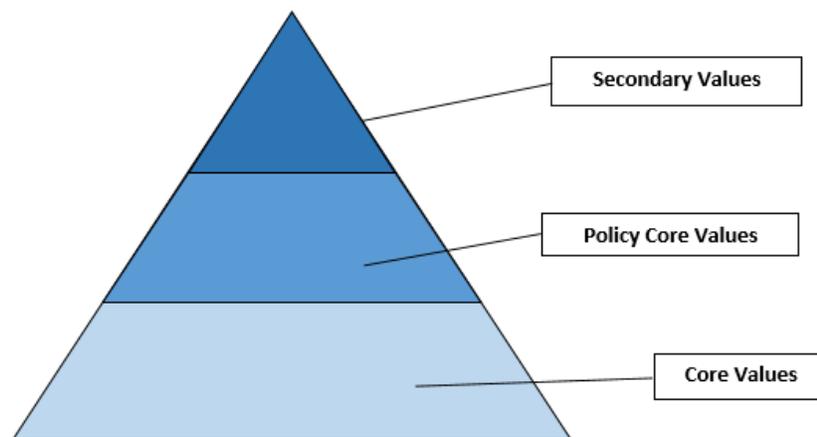


Figure 1: A visual representation of the Advocacy Coalition Framework (ACF)

The ACF is an organization tactic and political science theory credited to Sabatier and Jenkins-Smith. In terms of stalemates, it's typically used to categorize the sides of a policy stalemate. It is easiest to think of the ACF as a three-tiered pyramid (Figure 1). On the bottom, we see a coalition's core values, the values held at heart that may not be policy related. Above this we have the middle block, which consists of the policy core values. Inspired by the subconscious core values, these are the policy ideas that form the base of a coalition's argument.

On the top, we see something called the secondary values. These are the values that a coalition uses to frame the current policy situation. Each side is quick to share their side's secondary values, but resists connecting their core values with the opposition. Menahem and Gilad used the ACF in 2016 to categorize Israel's water policy. In their research, they found a situation very similar to the one in the United States. In Israel, 70% of water goes to agriculture, but both sides of a debate could not agree who the most important producers were. Menahem and Gilad went on to categorize each side's core, policy core, and secondary values. However, at the end of their research, they found a gap that their research helped fill. The ACF itself does not explain why a stalemate persists despite each side acknowledging its harm. The ACF claims that an external shock will promote breaking a stalemate, but in Israel, this proved to not be the case. Why? Menahem and Gilad proposed that one undertakes a Narrative Analysis (NA) to uncover this reason. Through a narrative that legitimizes one side and delegitimizes the other, they concluded that policy stalemates sometimes persist because each side has made the other seem incredibly unfavorable. Each side is unsuccessful at implementing their policy initiatives, but felt content in successfully stopping the other side from achieving their goals. It is this Narrative Analysis that will help guide my research into the CWA stalemate (Menahem and Gilad, 2016).

In terms of using the ACF to produce policy research, one must understand the theoretical focuses of the ACF. In a review of policy research using the ACF, three areas (or focuses) of the ACF come to light: Advocacy coalitions, policy change, and policy-oriented learning. Going through the three focuses, we can draw a parallel to my proposed research. First, advocacy coalitions can be clearly identified in a policy stalemate. One coalition wants a political action to occur, while the other is actively trying to stop it. A common way to assess these coalitions is through a hierarchical belief system. This hierarchy can be easily identified in

the article cited previously in this section. This hierarchy can be seen visually in the pyramid structure of the ACF when it comes to policy stalemates. The second focus of the ACF is the idea of policy change. This idea claims that large policy change requires a shift in policy core beliefs, while smaller policy shifts can be accomplished simply with a changed secondary belief. This may seem like a trivial idea, that larger change requires a larger idea shift, but in the realm of stalemate, it offers an explanation for some of the most long-standing stalemates. If two sides' policy core beliefs don't line up at all and if each side attacks the other side's belief system, a change in policy core values (and thus a change in policy) seems improbable. The final focus of the ACF is an overall attention to policy-oriented learning. This type of learning happens when each coalition attempts to work together in defining a new idea, new problem, or a new solution. This requires a belief or value change on both sides, and a re-working of both sides' knowledge base. Again, in a regards to stalemates, policy-oriented learning can only be accomplished when the sides cooperate and sacrifice a small amount of autonomy to come to a fair compromise. In a two-party system like the United States, this type of learning again seems unfeasible (Pierce, Peterson, Jones, Garrard, and Vu, 2017). Using this overall idea of the ACF, and taking into account the theoretical focuses of the ACF, we get a general idea of what to look for in the Clean Water Act debate.

The purpose of the following research is to serve as the first analysis of water policy stalemate in the United States. Policy research has been done on water policy, water policy stalemates, and general United States policy stalemates, but in reading through the current research, I have yet to find any based on United States water policy stalemates (a blend of all three). In the process of analyzing this debate, we will use the ACF to uncover the inner workings of the stalemate. Using the ACF focus on advocacy coalitions, we will attempt to

define the hierarchies associated with each side and how they differ. Using the Clean Water Act as a case study, this research will serve to answer the following question: What are the arguments on both sides of the Clean Water Act stalemate, and how can we use the Advocacy Coalition Framework to understand the persistence of this (and future) policy stalemates?

METHODS

In order to study this policy stalemate, I will be taking the Clean Water Act itself as a deviant case. Through a case study of its type, we can uncover what is behind the stalemate and why it persists. In this section, I will detail the importance of a deviant case, why I picked the CWA as a deviant case, and what to expect from the theoretical framework.

1. Case Selection Rationale

In the United States Congress, it is typical for a proposed bill to either be adopted and sent for signing by the president, or rejected and thrown out. It is not a commonplace occurrence when a bill becomes stuck in congress, not garnering enough votes to either pass or reject it. In fact, in the 114th congress (2015-2016), only 22 of over 12 thousand bills were left in stalemate (Statistics and Historical Comparison). It is even less common for a bill to be stuck in stalemate when both sides agree on the fact that the stalemate is hurting. Knowing this, we can safely say that the case of the Clean Water Act is an interesting deviant case. The importance of a deviant case is indicated in Seawright and Gerring's case selection techniques paper. A deviant case is one that demonstrates a surprising result compared to a general understanding. The purpose of analyzing a deviant case is to attempt to come to some new and unspecified explanation for why the case was deviant? The results from a deviant case can be used to propose some cross-case model that could be used to explain the deviance of any similar cases. The deviant case study is

typically exploratory in fashion, meaning that rather than trying to fit a case into an “average” or “typical” mean, we probe for new explanations for a case like ours (Seawright & Gerring). In the case of the Clean Water Act, it is classified as deviant due to the “standard” of bills being either rejected or passed (not in stalemate). The CWA case goes against this standard and is thus deviant. Using this case, I will develop an understanding of how this stalemate persists, and offer some possible outcomes.

2. Analysis Framework Overview

In the process of studying the deviant case, we will attempt to fit the differing arguments into the Advocacy Coalition Framework (ACF). As stated before, the ACF is mainly like a pyramid, with the large bottom representing core values, middle section representing policy core values, and the tip representing secondary or outer values. The ACF is typically used to study stalemates because it generally fits an argument very well. Each side of an argument typically frames their argument subconsciously using the ACF. This fits well with stalemates, because typically one finds that the secondary values are emphasized much more than the policy core and core values. In past research, it has been found that each side will formulate an argument using the ACF, and then put out a narrative that works to legitimize their side over the other. The resolution of the stalemate occurs when a large political shift or large external shock happens and causes one side to be legitimized (Menahem & Gilad). In the following paragraphs, I will detail the elements of the ACF, and how it may help to explain the stalemate.

The core values are the base of the ACF, and thus the base of any policy argument. These are typically not even related to policy or politics. A core value is one that is ingrained deeply into the argument and typically difficult to deduce. These values are best seen in the writings and testimony of individuals. In the Clean Water Act case, I will identify some key players on each

side of the argument. Whether it's an influential congressman, or a large company or organization in support or opposition, the core values can typically be deduced by analyzing the behavior of such actors over time. For example, if an organization's mission statement claims that they advocate for gender equality, then their statements in congress would demonstrate a core value of gender equality. It is difficult to find these core values based on statements alone, so we must delve deeper into the actors at play to see the base of the ACF. In most stalemate cases, the core values line up the most between both coalitions. Finding each side's core values can help me understand the basis upon which each side of the CWA dispute base their arguments.

The second layer of the ACF, the policy core values, are very similar to the core values except in that they deal exclusively with a policy issue. This is the first level where the differences between the coalitions begin to get stark. These values are a little more straightforward to deduce from testimony or letters, but one still has to do some inferring. For example, if a politician is testifying in congress, and always seems to make every issue in an argument a tax issue, then we can safely say that this side's core policy value is fairness of taxation. In my case and any other case, the policy core values are deduced within the case itself. In contrast to the core values (which need to be deduced based on past and present behavior), the policy core values generally are found within one case. Every case is different, and different coalitions are formed based on the issue at hand. This means that the policy core values can change based not only on the issue, but based on the actors on each side. Understanding the policy core values can help us start to formulate a pattern that we can use to study other stalemates. If it is found that certain demographics tend to share policy core values, we can use this to understand why individuals side with certain groups. Additionally, as we move up the

ACF, we see the difference of opinion increasing, which helps explain the persistence of the stalemate.

The topmost, and most prevalent part of the ACF are the secondary values. These values are the ones that are easiest to find. They are the arguments poised in the public eye, during hearings, testimonies, and press conferences. Like the tip of a pyramid, these values are typically very pointed and one sided. In an analogy to writing, the secondary value is most like the thesis statement. In politics, it's like the party platform statement. This value is what makes both sides of the ACF remain at ends. With an unusually pointed argument on both sides, we tend to see stalemates occurring. These arguments are specifically formulated to legitimize one side over the other. This best explains the persistence of stalemates that hurt both sides. Each side puts out a secondary value, and in turn makes both sides seem illegitimate. This requires that an external shock legitimizes one side over the other and ends the stalemate. Secondary statements are relatively easy to locate, as they typically bracket an argument made by an entity.

After categorizing the sides using the ACF and deducing each side's values, we will then perform a narrative analysis to truly figure out why this stalemate persists, even though both sides agree that a proposal must be passed. These values, and their respective narrative analyses will help us finalize the answer to our research question by highlighting the main argument of each side and the framing of the problem by each coalition.

RESULTS

In order to effectively make conclusions about the values on each side of the Clean Water Act debate, I sifted through congressional testimony, congressional hearings, and congressional floor records to find patterns and key actors for each coalition. In the following sections, I detail

some of these key actors, key stances, and emphasized quotes from the selection of congressional records. After detailing each side, I compare the two sides in an analysis of each ACF tier. Visual representations of both coalitions are found in Figure 2 and Figure 3.

I. THE EXPANDED REACH COALITION

1. Expanded Reach Coalition Core Values

Throughout congressional records and testimonies, there is a well-defined coalition that favors an expanded reach of Clean Water Act jurisdiction. Through an analysis of the statements being made on this side of the argument, one prominent core value comes to light. A core value of human health and water quality is seen in practically every statement or letter entered into congressional record by this coalition. Though there were a few outliers, the vast majority of actors in this coalition made statements with subtle (and not-so-subtle) references to an underlying value of human health. Two key supporters on this side echo the value over and over in their respective testimonies. These two supporters are Barbara Boxer (a senator from California) and Harry Reid (a senator from Nevada). Senator Boxer is arguably the largest figurehead for the expanded reach side of the CWA debate. In a 2015 joint hearing, Boxer testified and was questioned more than any other actor on her side of the debate, and had the longest prepared statement out of her side. In this hearing, Boxer reiterated a focus on human health and the importance of water quality when it comes to healthy living (Impacts of, 2015). Additionally, Boxer testified in front of the Subcommittee on Fisheries and Wildlife, saying that we are responsible for “ensuring that the waterways our children and families rely on for drinking water are free from pollution” (Legislative Hearing, 2015).

The second vocal supporter of expanded CWA jurisdiction is Harry Reid, a democratic senator from the state of Nevada. Reid spoke in front of congress twice to specifically make a statement about the importance of clean drinking water, and mentioned again and again how the health of millions of Americans depend on the cleanliness of their water. He brought up the water quality crisis in Flint, MI, and spun it more as a human health crisis throughout his floor speech (Cong. Rec. 21 Jan. 2016; Cong. Rec. 3 Nov. 2015). Harry Reid is also a perfect example of deducing core values from an individual's past. Reid's family comes from a mining town in Nevada where his family had no access to running water throughout his childhood. From this start in poverty, Reid has firsthand experience with the role that clean water can play in human health and overall quality of life ("Harry Reid", 2016). In this way, we can safely conclude that the value of human health and water quality is at the core of the expanded CWA jurisdiction side of the argument.

2. Expanded Reach Coalition Policy Core Values

Policy core values on this side of the argument were fairly simple to locate. These values, since they pertain strictly to policies, can be deduced by looking at which actors proposed each policy, and what they are saying about it. For the expanded reach coalition, the person most responsible for the proposal of the EPA's policy would be the EPA administrator Gina McCarthy. Throughout McCarthy's testimony and questioning period, we can identify a clear policy value held by this side: Rulemaking consistency and clarity. In her testimony and question period, McCarthy mentioned the words "clarity", "clear", or "clarify" 48 times in one hearing. In almost every statement, and every answered question, McCarthy stated that the overall goal of enacting the Clean Water Rule was to establish rulemaking clarity and consistency (Impacts of,

2015). Clearly we see that Ms. McCarthy's main driver in proposing this rule is a want for rulemaking consistency.

This policy value is echoed by Senator Debbie Stabenow of Michigan, a state that is home to the largest freshwater assets in the entire United States. Stabenow, in a hearing in front of the Committee on Agriculture, Nutrition, and Forestry, expressed this same want for rulemaking clarity one year earlier. Taking a more agricultural spin, she claimed that she believes the EPA clarified rule will make it far easier for our nation's agricultural producers to determine what within jurisdiction of the Clean Water Act—what counts as wetlands—and what is not (Farmers and Fresh Water, 2014). This desire for clarity was expressed on three occasions in Stabenow's prepared statement, each time claiming that the EPA's rule was one that served the purpose of clarification.

Along with McCarthy and Stabenow, this policy core value is expressed by other congressmen (Jared Huffman of California) and nationwide organizations that are involved in water and water quality (American Great Waters Coalition and the Association of State Floodplain Managers). With this sense of cooperation, it is safe to say that this coalition shares a common policy core value of rulemaking clarity and consistency. Similar to core values, these are not always straightforward and given in every statement, but they are consistently repeated by member of this coalition, as a sort of driver for their policy decision.

3. Expanded Reach Coalition Secondary Values

The expanded reach coalition shares a common secondary value amongst almost every actor that testified in the studied hearings. Broadly, we can say that the secondary value for this coalition is the importance of scientific evidence, environmental science, and trust in our nation's

scientists. A typical testimony involving this value would claim two things: Expanding CWA jurisdiction is in agreement with science, and peer-reviewed science needs to be trusted. A perfect example of this is by Senator DeFazio in the joint hearing cited in the previous section. DeFazio claims that “Science has advanced” and we have a better understanding of how water can travel between state lines and show greater connectivity. Yet, in the words of DeFazio “Congress hasn’t acted” (Impacts of, 2015).

One of the most tell-tale signs that this is a secondary value comes from a statement by Patrick Parenteau, a law professor at Vermont Law School. With little science background, Parenteau still claims science as an indicator for a necessarily larger reach. Parenteau claims that “the science is clearly on the side of the approach the EPA is taking” (Legislative Hearing, 2015). Since this coalition tends to be in agreement across the board, with actors from all different backgrounds agreeing that their side agrees with science, we can definitively say that this side’s secondary values are scientific certainty and evidence-based claims.

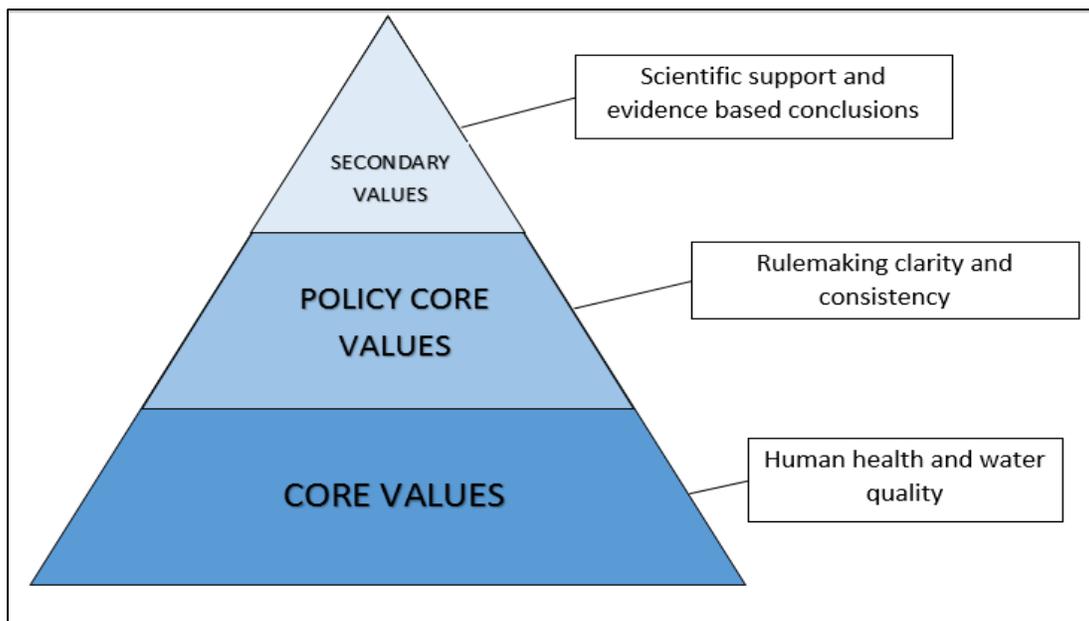


Figure 2. The ACF for the Expanded Reach Coalition

II. THE RESTRICTED REACH COALITION

1. Restricted Reach Coalition Core Values

On the other side of the floor, we see a coalition whose goal is to dial back the jurisdiction of the Clean Water Act. This side is fighting for a more narrow focus, and for more power to be devolved to the state level, rather than the EPA. Through analysis of statements and biographical information on some key actors on this side, we can conclude that the core value expressed by this coalition is a stewardship of the land, and the preservation of water as a natural resource. On this side, the three key actors are John Barrasso (a senator from Wyoming), Dan Sullivan (a senator from Alaska), and Kent Pepler (the president of the Rocky Mountain Farmers Union). Barrasso's testimony comes from the same hearing in which Senator Boxer made her remarks about human health. In the testimony that Barrasso gave, he mentioned the word "pristine" twice in two separate paragraphs, both pertaining to the protection and maintenance of United States waterways. Barrasso also mentions that the waters of the United States "are among America's most treasured resources" (Legislative Hearing, 2015).

Dan Sullivan echoed these sentiments from Senator Barrasso in his testimony, which directly followed Barrasso's. Sullivan boasted about Alaska's clean water, world class fisheries, and high quality drinking water. Sullivan reiterated the importance of caring for and protecting America's water, and keeping the resource pristine like in his home state of Alaska. Sullivan claimed that water and water quality fell under the category of one of "Alaska's precious resources" (Legislative Hearing, 2015). As the former commissioner of the Alaska Department of Natural Resources, Sullivan has had a past that heavily involved water as a natural resource, and thus, we can theorize (as with Reid's past) that this value has persisted longer than just in this debate ("Meet Dan").

Finally, the testimony of Kent Pepler is one that represents a fairly large number of actors on this side of the debate. As the president of the Rocky Mountain Farmers Union, Kent speaks for the farmers and agricultural producers from three very agriculture-intense states: Colorado, Wyoming, and New Mexico. The mission statement of the RMFU states that a large part of their mission is “promoting stewardship of land and water resources” (“About Us”). In Pepler’s testimony in a hearing on front of the Committee on Agriculture, Nutrition, and Forestry, he reiterated that water was a precious resource, and how a final rule should “protect the nation’s water resources” (Waters of the United States, 2015).

Through analysis of these quotes, we can see that this coalition shares a close core value with the other coalition. The restricted reach coalition does express a genuine concern for water quality and conservation, they just frame in a more natural resource focused way. This side values wise stewardship of the land, and they argue over and over again that farmers are the original—and best—stewards of the land. This stewardship, coupled with the protection of water as one of the nation’s precious resources, forms the core values of this coalition.

2. Restricted Reach Coalition Policy Core Values

The restricted reach coalition has a very clear policy core value. Through testimony from many actors on this side, we see a policy core value of private property and water rights from almost every advocate on this side. Scott Pruitt (the attorney general from Oklahoma), Ron Sullivan (from the Eastern Municipal Water District), and Bob Gibbs (a senator from Ohio) all petitioned for the policy value of private property rights throughout multiple hearings. In a summary of the EPA’s proposed rule, Bob Gibbs claimed that the rule “erodes personal property rights, and is going to add to the cost of farmers and developers and so on” (Cong. Rec. 13 Jan.

2016). This ends up being an almost perfect picture of this coalition's values, as we can see in the testimonies of both Pruitt and Sullivan.

In his prepared statement, Scott Pruitt claimed that property rights are what makes America economically free, and that property rights are at the foundation of any solid democracy. These general statements set the entire mood for Pruitt's arguments. He goes on further to make the claim that the EPA's rule will harm individual property rights, and goes as far as to say that the very foundation of America (property rights) is poised to be eroded by the EPA (Impacts of, 2015).

In addition to private property rights, water rights are also a policy value shared by this side. Ron Sullivan, a member of the board of directors for the Eastern Municipal Water District, demonstrates a genuine worry that the EPA's rule will limit the water rights of many municipalities. Given that the EMWD is located in Perris, California, these rights are incredibly important to a drought-prone region. Sullivan argues that "respecting the role of states in water management and respecting state allocated water rights is fundamental to meeting current and future water needs" (Proposed Federal, 2015).

Similar to the other side, this value is shared by countless other actors on this side, including Paul Gosar (a representative from Arizona) and Tom McLintock (a representative from California). One thing that ensures that this is a policy core value (and not just random chance) is that all three prominent actors on this side gave similar values in three different hearings. This makes it more likely to be a shared policy core value in this coalition.

3. Restricted Reach Coalition Secondary Values

Overall, this side's secondary values lie very close to their policy core values, which makes their secondary values more difficult to differentiate. However, a clear and concise way of explaining this side's secondary values is as follows: This side claims that their vision for the CWA protects personal freedom and liberty, a staple of the United States. A good example of this value is rooted in the fact that one of the hearings studied was titled "Proposed Federal Water Grabs". The chairman (and organizer) of this hearing was John Fleming, a Senator from Louisiana who has been consistently on the restricted reach side (Proposed Federal, 2015). The title of this hearing suggests that this side views any expansion of jurisdiction as a cut into their personal freedoms of private property. In fact, in all of the hearings studied, the phrase "Power Grab" comes up 12 times, from 6 separate people.

In a concise summary of the secondary values, we turn to Glenn Thompson, a Representative from Pennsylvania. In his testimony he claims that "many experts have suggested that upon closer review, the specifics of the new rule appear to be nothing more than a power grab" (A Review of, 2014). In short, this side claims that their solution protects personal freedoms and individual liberty.

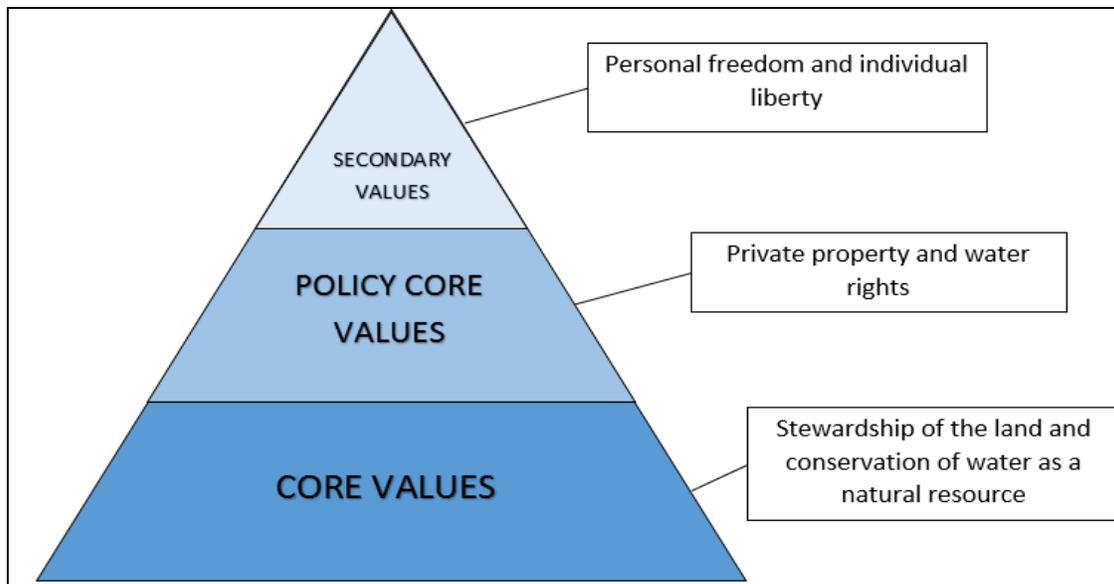


Figure 3. The ACF for the Restricted Reach Coalition

ANALYSIS

Before comparing the values on each side, it is important to make a note about the members of each coalition. In terms of political alliance, a vast majority of the expanded reach coalition are Democratic (or at least more left-leaning Republicans) while most of the restricted reach coalition is Republican or Libertarian. Another interesting result to note is that there seems to be very little deviation in arguments from vastly different regions of the country. For example, senators from dry, arid states are advocating for wetland protection and senators from states surrounded by water are vouching for less water protection. Coalition members seem to be sticking to the argument presented by the loudest voices, even when it may not represent exactly what their state, region, or organization believes. This point becomes a very important conclusion that I will make in the following section.

1. Comparison of Core Values

In both analysis we saw values being reiterated over and over by each side, and people who represented very large groups of people making statements about their beliefs. On the expanded reach side, we saw the past of Harry Reid playing a part in that coalition's stance, and Barbara Boxer's multitude of testimonies regarding the stance. In reading through more and more of this side's arguments, it becomes clear that the core value emphasized is a focus on human health and water quality.

On the other side, we see Dan Sullivan, a former Department of Natural Resources (DNR) administrator, and Kent Pepler, a voice for hundreds of thousands of farmers in the Rocky Mountain area speaking out about the need for wise stewardship of the land and the preservation of water as a natural resource. In both of their testimonies, the statements are bookended by both men stating the importance of clean water and the preservation of our natural resources.

In connection to the ACF theory, we see little to no acknowledgement of this blatant agreement. Both sides want close to the same thing at heart, but refuse to acknowledge this truth. This becomes the base on which a policy stalemate is built. The ACF dictates that, as we move up the "pyramid" we see more acknowledgement between coalitions of their policy core and secondary values. At the core, we expect (and concluded) that the values lie close to each other, but are not connected by the coalitions themselves.

2. Comparison of Policy Core Values

This tier of the ACF becomes a little bit easier to deduce than the core values tier. On both sides, we can clearly see policy core values coming to light in the testimonies of various

senators, representatives, and organization leaders. While looking through the hearings for common policy core values, we see something interesting. In this level of the ACF, we should expect to start seeing each side attempting to delegitimize the other side. In fact, we do see this quite clearly in two quotes, each from different sides. On the restricted reach side, we see Paul Gosar claiming that “Instead of creating clarity, this administration has created chaos” (Proposed Federal, 2015). On the other side, Grace Napolitano stated that “Opponents of the Clean Water Rule call it an attack on private interest, calling it a land grab fueled by Federal greed. However, our nation has never recognized a right to pollute” (Impacts of, 2015).

This fits well with our understanding of the ACF, and again validates the persistence of the stalemate. As the framework anticipates, we can see the values becoming more apparent (and thus more able to be delegitimized by the other side). This is indicative of a typical stalemate within the structure of the ACF (Menahem, 2016).

3. Comparison of Secondary Values and Narratives

In the secondary values is where we really finalize our understanding of the stalemate. On one side, we have a coalition believing they are on the side of scientific evidence, and on the other side we have a coalition believing they are protecting individual freedom and liberty. In all of this, the ACF claims that a shock to the system should be able to break this stalemate loose. However, we see a very similar case here as with the Menahem study. The Flint water crisis brought itself to light in the middle of this debate, and in theory should have been able to break up this stalemate. In theory, this crisis would occur and spur cooperation between the coalitions. In the face of the crisis, both sides would acknowledge that being in the stalemate hurts the constituents, and a compromise must be met. Coupled with the two court cases—Sackett and

Rapanos—we should expect to see this hurting stalemate acknowledged and broken. This is not what we ended up seeing in practice, though.

As with the Menahem article, we need to look into the narrative on each side to uncover what these coalitions are really vying for. On the expanded side, we see countless instances of actors focusing solely on delegitimizing the opponent rather than acknowledging where their values may coincide. Gina McCarthy claimed that the EPA was not expanding jurisdiction and was not eliminating any exemptions. She claimed over and over that the idea of this proposal being a land or power grab was absurd (Impacts of, 2015). On the other side, we see almost every actor claiming that the EPA is only after their property and their power. Using this narrative analysis, we can clearly see the goals of each coalition. The coalitions are not in the debate to try and push their proposal through, they are merely hoping to stop the other side from passing their proposal. In this way, each coalition is content getting nothing passed, as long as the opponent does not get their proposal passed.

In a similar conclusion to the Menahem article, we can safely conclude that, through the use of the ACF and Narrative Analysis, this hurting stalemate persists although both sides should (due to their core values) be fighting for a passing of clear-cut and understandable CWA jurisdiction. This policy stalemate persists due to the fact that each coalition doesn't address their full spectrum of values, and the idea that each coalition's goal is not to pass their legislation, but to block any opposing legislation. It is this idea that one side's failure equals the other side's success that I propose calling "win-and-loss" policymaking. This form of policymaking, in combination with coalitions that do not internally address their goals and values led to the persistence of this policy stalemate.

CONCLUSION

Under the Obama administration, the Clean Water Act jurisdiction debate had flourished. President Obama had vowed to veto any attempt to restrict CWA jurisdiction, but the side that wanted this could not garner the votes to even send it to the oval office. In the current policy environment, we see a radical shift in control in Washington. Not only are both the House and Senate controlled by historically anti-government-intervention politicians, but we have now elected a president who made promises in his campaign to cut back environmental regulations, including the Clean Water Act jurisdiction. However, there is still hope for the slowing of wetland destruction. Regardless of which side wins the debate, we can be confident in saying the jurisdictional marks of the CWA will be clear and consistent. While in the stalemate, the ruling of *Sackett v. EPA* had made challenging the CWA jurisdiction a fairly easy win on the side of developers. Following any break of this stalemate, further research should be done to track wetland degradation numbers and the change in overall congressional opinion. In terms of the stalemate, further research should be done upon the breaking—or continuing—of this stalemate to try and understand how it is finally broken. Additionally, this idea of win-and-loss policymaking should be explored further in different policy stalemates and congressional debates.

In terms of policy stalemates in general, the findings of this research project bring to light a couple of main points. First, the political environment of the United States seems to put a great deal of emphasis on “win-and-loss” policymaking. Seats or traction gained by the opposition are viewed as “losses”, while the opposite is seen as a “win”. Second, coalitions and factions that align themselves with party lines seem to entrench themselves in views without addressing or sharing values and goals for policymaking. This has been an idea that many political researchers

have realized over the years. The current policymaking environment is incredibly over-politicized and not cooperative. This research gives further evidence towards the idea that this politicizing is impeding quality policymaking on both sides of the political spectrum. To combat this impediment would mean a radical paradigm shift in policymaking towards a more goal-oriented process. Rather than tallying wins and losses, policymakers and coalitions should construct an overarching goal based on their values, and periodically assess the progress of policymaking in terms of completion of the goal. This shift in policymaking puts less emphasis on the “competition” of coalitions and puts more importance on the achievement of goals. In setting these goals, it may very well be found that coalitions that once seemed at odds with each other are actively working towards a similar goal, eliminating the inherently competition-based policy stalemate.

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