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CELEBRATING 55 YEARS

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No one likes the busybody who rearranges the kitchen cupboards, sorts the laundry and washes the floor without being invited to do so. Similarly, people do not appreciate the intrusion of the federal government when a new rule could drastically affect property owners, developers and other stakeholders in the name of “connectivity.”

In March 2014, a proposed rule was released from the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers that would expand exponentially the jurisdiction of the Clean Water Act. This new rule would apply Clean Water Act Standards to all natural and man-made tributary systems including lakes, streams, ponds, wetlands and ditches. This is troubling on a number of counts.

For starters, the current permitting system can be painfully slow for a number of reasons including lack of personnel, confusing regulations and an overabundance of bureaucracy. If this proposed legislation were to be enacted, this problem would be multiplied one thousand fold by the number of new cases, ensuing legal challenges and red tape. In short, the new legislation puts every body of water in the United States in an “up for grabs” situation, which will result in delayed development and staggering waits for the business community for permitting.

In addition, the rule clearly contradicts the Clean Water Act’s intention to grant states authority over land and water. State rule has proven to be the most effective, fair and responsive route to determining which projects represent the best fit for our local communities. Under this new scenario, agriculture, commercial and residential real estate development, electric transmission, transportation, energy development and mining will all be affected and, as a result, thousands of jobs will be lost.

Further, the rule doesn’t only extend to the business community, it also affects local property owners and jeopardizes the rights of millions of Americans. Expanded jurisdiction is tantamount to a federal takeover of all waters in the United States including the small pond in your backyard. The EPA has already issued a draft scientific study purporting to find that virtually all wetlands and streams are “physically, chemically, and biologically connected” to downstream waters over which the EPA already claims authority. This is truly a case of government not seeking an inch, but seeking to seize control of the entire mile.

To add an even more ominous air of intrigue, the rulemaking was released before the completion of a review of the connectivity study being conducted by the Science Advisory Board (SAB). This board, which includes a broad variety of independent scientific experts, is tasked with assessing the scientific validity of the report, upon which the agency will base their rule defining “waters of the United States.” Add that to the fact that the rulemaking was released just one day after the due date for public comments on the agency’s draft report (over 100,000 comments were submitted), and you have a scenario where a “half baked cake” has been rushed out of the oven and onto the dinner

table.

Existing water regulations are by no means perfect, but they are certainly better than a government overreach that puts the rights of property owners, developers and other business concerns in the backseat in favor of an unmitigated power grab. Past attempts by Congress to pass legislation to expand federal control of non-navigable waters have failed, including a more recent attempt in 2009. If business rights are to be protected and property owners are to avoid backyard visits by the EPA, the government meddler needs to be given a refresher course on the concept of freedom from unwarranted and unneeded federal intervention.

Megan Prieto is president and owner of Granite Commercial Real Estate, Bedford, N.H.