

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE CONCURRENT RESOLUTION 1024

A CONCURRENT RESOLUTION

SUPPORTING STATE SOVEREIGNTY OVER INTRASTATE WATER RESOURCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Whereas, the Tenth Amendment of the United States Constitution
2 preserves powers not delegated to the federal government for the states,
3 establishing federalism and state sovereignty as integral founding principles
4 of American government; and

5 Whereas, the United States Supreme Court in Solid Waste Agency of
6 Northern Cook County v. United States Army Corps of Engineers, (2001) and
7 Rapanos v. United States, (2006) held that the Federal Water Pollution
8 Control Act, known as the Clean Water Act, did not intend to grant federal
9 authority over intrastate waters, and that these waters are not subject to
10 regulation under the interstate commerce clause of the United States
11 Constitution; and

12 Whereas, United States Senate Bill 787 and United States House of
13 Representatives Bill 5088 (2009) would have expanded the Clean Water Act's
14 jurisdiction from "navigable waters of the United States" to "waters of the
15 United States" and defined "waters of the United States" to mean "all other
16 waters, such as intrastate lakes, rivers, streams including intermittent
17 streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet
18 meadows, playa lakes, or natural ponds"; and

19 Whereas, this definition grants the United States Environmental
20 Protection Agency broad and vague flexibility to interpret federal
21 jurisdiction expansively, which it attempted to do under the current law and
22 with which the Supreme Court disagreed; and

23 Whereas, these bills represented a clear attempt by the federal
24 government to deprive states of their jurisdiction over intrastate waters and
25 place all water resources under the control of the federal government; and

26 Whereas, legislation such as this would severely diminish state
27 sovereignty over natural resources and would detrimentally involve the
28 federal government in an inefficient and cumbersome effort to regulate highly
29 localized water resources such as abandoned pits and ponds; and

30 Whereas, legislation such as this would also impact a federally
31 recognized tribe, nation, band or community of Indians in this state with
32 regard to use of rivers and waters that are upstream of tribal land, that
33 flow through tribal land or waters that are not on tribal lands but, by
34 compact, may be used for sacred ceremonies; and

35 Whereas, jurisdiction over intrastate water resources is a role
36 traditionally held by individual state governments in order to promote
37 efficient and effective usage.

38 Therefore

39 Be it resolved by the Senate of the State of Arizona, the House of
40 Representatives concurring:

41 1. That the Members of the Legislature support the continued
42 sovereignty and jurisdiction of the states to regulate intrastate water
43 resources and oppose any attempt by the federal government to diminish this
44 jurisdiction unnecessarily.

1 2. That the Secretary of State of the State of Arizona transmit copies
2 of this Resolution to the President of the United States Senate, the Speaker
3 of the United States House of Representatives and each Member of Congress
4 from the State of Arizona.