PROPOSED AMENDMENT
SENATE AMENDMENTS TO S.C.M. 1004
(Reference to printed memorial)

1 Strike everything after the representing clause and insert:

"Whereas, on April 21, 2014, the United States Environmental Protection
Agency and the United States Army Corps of Engineers published a proposed
rule in the Federal Register that defines "Waters of the United States" under
the Clean Water Act; and

Whereas, the final rule is projected to be published in the Federal
Register in April 2015; and

Whereas, the rule purports to clarify issues raised in two United
States Supreme Court decisions, Solid Waste Agency of Northern Cook County v.
U.S. Army Corps of Engineers and Rapanos v. United States, that created
uncertainty over the Clean Water Act's scope and application; and

Whereas, the rule will expand the scope of the Clean Water Act,
resulting in greater impacts to this state, as well as on local governments,
their citizens and their businesses; and

Whereas, the rule will subject almost all physical areas with a
connection, or a "significant nexus," to downstream navigable waters,
including features such as ditches, natural or manmade ponds and floodplains,
to the jurisdiction of the Clean Water Act; and

Whereas, the rule will apply to all programs under the Clean Water Act;
and

Whereas, the rule change will cause significant harm to local farmers,
stall the development of businesses and strip local providers of their
control of land use for sustainable food production; and

Whereas, the cost to our municipalities and taxpayers will be enormous; and
Whereas, the rule is contrary to the ruling of the United States Supreme Court in *Rapanos* as it appears to rely heavily on the minority opinion’s concept of “significant nexus,” which was rejected by the Court’s prevailing opinion; and

Whereas, the term “significant nexus” does not appear in the Clean Water Act; and

Whereas, under the rule, groundwater may be used in making determinations of a “significant nexus,” which is an overreach of the federal agencies as groundwater systems are under the jurisdiction of the states and should not be broadly used in justifying a determination of jurisdictional water of the United States; and

Whereas, in *Solid Waste Agency of Northern Cook County*, the United States Supreme Court stated that the use of “case by case” determinations should be the exception, not the rule, and the rule allows for broad use of case by case determinations, which inserts needless uncertainty into the development process; and

Whereas, the rule grants the United States Environmental Protection Agency and the United States Army Corps of Engineers authorities not specifically granted to them by the Clean Water Act; and

Whereas, the proposed rule, should it become effective, will hamper beneficial development, increase costs of infrastructure construction and maintenance and result in an unacceptable level of uncertainty in the permitting process; and

Whereas, the Constitution of the United States was meant to reserve to the states exclusive jurisdiction over their respective nonnavigable, intrastate waters and waterways within their boundaries except as expressly delegated to the federal government by the Constitution or prohibited by it to the states, and the federal government’s power to regulate navigable waters cannot constitutionally reach nonnavigable, intrastate waters and waterways that have no significant connection to navigable waters; and
Whereas, it is impractical for the federal government to regulate every
ditch, pond and rain puddle that may have some tenuous connection, miles
away, to a body of water that is currently defined as “navigable.”
Wherefore your memorialist, the Senate of the State of Arizona, the House of
Representatives concurring, prays:
1. That the United States Congress enact legislation that invalidates
the federal rule that defines “Waters of the United States” under the Clean
Water Act.
2. That the Secretary of State of the State of Arizona transmit copies
of this Memorial to the President of the United States, the President of the
United States Senate, the Speaker of the United States House of
Representatives, each Member of Congress from the State of Arizona, the
Administrator of the United States Environmental Protection Agency and the
Commanding General and Chief of Engineers of the United States Army Corps of
Engineers.”
Amend title to conform