

Senate Engrossed

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SENATE CONCURRENT MEMORIAL 1004

A CONCURRENT MEMORIAL

URGING THE CONGRESS OF THE UNITED STATES TO PASS H.R. 594.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 To the Congress of the United States of America:

2 Your memorialist respectfully represents:

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

7 Whereas, the final rule is projected to be published in the Federal
8 Register by August 31, 2015; and

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

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

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

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

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

25 Whereas, the cost to our municipalities and taxpayers will be enormous;
26 and

27 Whereas, the rule is contrary to the ruling of the United States
28 Supreme Court in *Rapanos* as it appears to rely heavily on the minority
29 opinion's concept of "significant nexus," which was rejected by the Court's
30 prevailing opinion; and

31 Whereas, the term "significant nexus" does not appear in the Clean
32 Water Act; and

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

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

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

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

5 Whereas, the Constitution of the United States was meant to reserve to
6 the states exclusive jurisdiction over their respective nonnavigable,
7 intrastate waters and waterways within their boundaries except as expressly
8 delegated to the federal government by the Constitution or prohibited by it
9 to the states, and the federal government's power to regulate navigable
10 waters cannot constitutionally reach nonnavigable, intrastate waters and
11 waterways that have no significant connection to navigable waters; and

12 Whereas, it is impractical for the federal government to regulate every
13 ditch, pond and rain puddle that may have some tenuous connection, miles
14 away, to a body of water that is currently defined as "navigable."

15 Wherefore your memorialist, the Senate of the State of Arizona, the House of
16 Representatives concurring, prays:

17 1. That the United States Congress pass H.R. 594, which prohibits the
18 United States Environmental Protection Agency and the United States Army
19 Corps of Engineers from developing, finalizing, adopting, implementing,
20 applying, administering or enforcing the proposed federal rule that defines
21 "Waters of the United States" under the Clean Water Act.

22 2. That the Secretary of State of the State of Arizona transmit copies
23 of this Memorial to the President of the United States, the President of the
24 United States Senate, the Speaker of the United States House of
25 Representatives, each Member of Congress from the State of Arizona, the
26 Administrator of the United States Environmental Protection Agency and the
27 Commanding General and Chief of Engineers of the United States Army Corps of
28 Engineers.