

REFERENCE TITLE: state authority; nonnavigable, intrastate waters

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

# SCR 1015

Introduced by  
Senator Pierce

## A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING THE CONSTITUTION OF ARIZONA BY ADDING ARTICLE XXXI; RELATING TO STATE AUTHORITY OVER WATERS OF THIS STATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of  
2 Representatives concurring:

3 1. Article XXXI, Constitution of Arizona, is proposed to be added as  
4 follows if approved by the voters and on proclamation of the Governor:

5 ARTICLE XXXI. STATE AUTHORITY OVER WATERS OF THIS STATE

6 1. Limitation on federal regulation of nonnavigable,  
7 intrastate waters; prohibition on state  
8 expenditures; private right of action; severability

9 SECTION 1. A. TO PRESERVE THE CHECKS AND BALANCES OF THE  
10 CONSTITUTION OF THE UNITED STATES, THIS STATE HEREBY EXERCISES  
11 ITS SOVEREIGN AUTHORITY:

12 1. TO PROHIBIT ANY FEDERAL AGENCY OR OFFICIAL FROM  
13 ENFORCING ANY FEDERAL REGULATION THAT PURPORTS TO REGULATE  
14 NONNAVIGABLE, INTRASTATE WATERS OR WATERWAYS WITHIN THE  
15 BOUNDARIES OF THIS STATE UNLESS THAT REGULATION IS CLEARLY AND  
16 MANIFESTLY AUTHORIZED BY AN ACT OF CONGRESS.

17 2. TO PROHIBIT THIS STATE, ITS AGENCIES AND ALL OF ITS  
18 POLITICAL SUBDIVISIONS FROM USING ANY PERSONNEL OR RESOURCES TO  
19 ENFORCE, ADMINISTER OR COOPERATE WITH ANY FEDERAL ACTION OR  
20 PROGRAM THAT PURPORTS TO REGULATE NONNAVIGABLE, INTRASTATE  
21 WATERS OR WATERWAYS UNLESS A SHOWING IS FIRST MADE IN THE COURTS  
22 OF THIS STATE WITHOUT DEFERENCE TO ANY ADMINISTRATIVE  
23 DETERMINATION AND BASED ON CLEAR AND CONVINCING EVIDENCE THAT  
24 SUCH REGULATION IS ABSOLUTELY NECESSARY TO THE EXERCISE OF  
25 POWERS EXPRESSLY DELEGATED TO THE FEDERAL GOVERNMENT BY THE  
26 CONSTITUTION OF THE UNITED STATES.

27 B. THIS ARTICLE IS ENFORCEABLE IN EQUITY IN THE COURTS OF  
28 THIS STATE BY ANY RESIDENT OF THIS STATE WITHOUT FEE, EXPENSE OR  
29 COST SHIFTING TO THIS STATE.

30 C. IF A PROVISION OF THIS ARTICLE OR ITS APPLICABILITY TO  
31 ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES  
32 NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE THAT  
33 CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR  
34 APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE  
35 SEVERABLE.

36 2. Policy and purpose; state jurisdiction

37 SECTION 2. A. THE CONSTITUTION OF THE UNITED STATES IS  
38 THE SUPREME LAW OF THE LAND TO WHICH ALL GOVERNMENT, STATE AND  
39 FEDERAL, IS SUBJECT.

40 B. THE CONSTITUTION OF THE UNITED STATES WAS MEANT TO  
41 RESERVE TO THE STATES EXCLUSIVE JURISDICTION OVER THEIR  
42 RESPECTIVE NONNAVIGABLE, INTRASTATE WATERS AND WATERWAYS WITHIN  
43 THEIR BOUNDARIES EXCEPT AS EXPRESSLY DELEGATED TO THE FEDERAL  
44 GOVERNMENT BY THE CONSTITUTION OR PROHIBITED BY IT TO THE  
45 STATES.

1 C. THE FEDERAL GOVERNMENT'S POWER TO REGULATE NAVIGABLE  
2 WATERS CANNOT CONSTITUTIONALLY REACH NONNAVIGABLE, INTRASTATE  
3 WATERS AND WATERWAYS THAT HAVE NO SIGNIFICANT CONNECTION TO  
4 NAVIGABLE WATERS.

5 D. NO ENUMERATED POWER OF THE FEDERAL GOVERNMENT MAY BE  
6 APPLIED CONSTITUTIONALLY TO THREATEN THE CONTINUED EXISTENCE OF  
7 ANY STATE AS AN AUTONOMOUS SOVEREIGN BODY.

8 E. FOR OVER ONE HUNDRED FIFTY YEARS, CONGRESS GENERALLY  
9 HAS ADOPTED A PRINCIPLED DEFERENCE TO THE STATES' EXCLUSIVE  
10 JURISDICTION OVER THEIR RESPECTIVE NONNAVIGABLE, INTRASTATE  
11 WATERS AND WATERWAYS, ESPECIALLY IN THE FIELD OF WATER LAW.

12 F. THE CONTINUED EXISTENCE OF THE STATES, INCLUDING THIS  
13 STATE, AS AUTONOMOUS SOVEREIGN BODIES REQUIRES SUCH EXCLUSIVE  
14 JURISDICTION OVER THEIR RESPECTIVE NONNAVIGABLE, INTRASTATE  
15 WATERS AND WATERWAYS AS IS NECESSARY AND PROPER TO ENSURE THAT  
16 ADEQUATE WATER SUPPLIES ARE AVAILABLE, DEVELOPED, MAINTAINED AND  
17 DELIVERED TO PROTECT THEIR TAX BASES, AS WELL AS PUBLIC HEALTH  
18 AND SAFETY.

19 2. Short title

20 Article XXXI, constitution of Arizona, shall be known and may be cited  
21 as the "Water is Life Amendment".

22 3. The Secretary of State shall submit this proposition to the voters  
23 at the next general election as provided by article XXI, Constitution of  
24 Arizona.