

BILL ANALYSIS

Senate Research Center
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S.C.R. 32
By: Seliger
Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Individual state governments have traditionally held jurisdiction over intrastate water resources, but S. 787, 111th Cong. (2009), and H.R. 5088, 111th Cong. (2010), would expand the Federal Water Pollution Control Act, widely known as the Clean Water Act, to extend federal jurisdiction from "navigable waters of the United States" to "waters of the United States," defined to include "all other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds."

Not only would such changes involve the federal government in inefficient and cumbersome efforts to regulate highly localized water resources, such as abandoned pits and ponds, but this definition also grants the United States Environmental Protection Agency broad and vague flexibility to interpret federal jurisdiction expansively, which the agency has attempted to do under the current law and with which the United States Supreme Court has disagreed. In *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (2001) and *Rapanos v. United States* (2006), the Supreme Court held that the Clean Water Act was not intended to grant federal authority over intrastate waters and that these waters were not subject to regulation under the Interstate Commerce Clause of the United States Constitution.

The Tenth Amendment of the United States Constitution preserves powers not delegated to the federal government for the states, establishing federalism and state sovereignty as integral founding principles of American government. Recent proposals by Congress to amend the Clean Water Act represent a clear attempt to diminish the sovereignty of states by depriving them of their jurisdiction over intrastate waters and placing all water resources under the control of the federal government.

RESOLVED

That the 82nd Legislature of the State of Texas hereby express its opposition to any attempt by the federal government to diminish the jurisdiction of individual states over their intrastate water resources.

That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the president of the Senate and the speaker of the House of Representatives of the United States Congress, and to all the members of the Texas delegation to Congress with the request that this resolution be entered in the Congressional Record as a memorial to the Congress of the United States of America.