

By: Price

H.C.R. No. 78

CONCURRENT RESOLUTION

1 WHEREAS, Individual state governments have traditionally
2 held jurisdiction over intrastate water resources, but S. 787,
3 111th Cong. (2009), and H.R. 5088, 111th Cong. (2010), would expand
4 the Federal Water Pollution Control Act, widely known as the Clean
5 Water Act, to extend federal jurisdiction from "navigable waters of
6 the United States" to "waters of the United States," defined to
7 include "all other waters, such as intrastate lakes, rivers,
8 streams (including intermittent streams), mudflats, sandflats,
9 wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
10 natural ponds"; and

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

24 WHEREAS, The Tenth Amendment of the United States

1 Constitution preserves powers not delegated to the federal
2 government for the states, establishing federalism and state
3 sovereignty as integral founding principles of American
4 government; recent proposals by Congress to amend the Clean Water
5 Act represent a clear attempt to diminish the sovereignty of states
6 by depriving them of their jurisdiction over intrastate waters and
7 placing all water resources under the control of the federal
8 government; now, therefore, be it

9 RESOLVED, That the 82nd Legislature of the State of Texas
10 hereby express its opposition to any attempt by the federal
11 government to diminish the jurisdiction of individual states over
12 their intrastate water resources; and, be it further

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