

1 **CONCURRENT RESOLUTION EXPRESSING OPPOSITION**
2 **TO CONGRESSIONAL EFFORTS TO EXPAND THE**
3 **JURISDICTION OF THE CLEAN WATER ACT**

4 2009 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Melvin R. Brown**

7 Senate Sponsor: Ralph Okerlund

8
9 **LONG TITLE**

10 **General Description:**

11 This concurrent resolution of the Legislature and Governor expresses strong opposition
12 to any federal legislation that would expand the reach and scope of the Clean Water
13 Act.

14 **Highlighted Provisions:**

15 This resolution:

16 ▶ expresses strong opposition to any federal legislation that would expand the reach
17 and scope of the Clean Water Act and a strong commitment to the goals and
18 objectives of the original Act;

19 ▶ asserts that, given the scope of what could be construed as "waters of the United
20 States," it is not in the nation's interest to subject these waters to all of the
21 requirements of federal regulation; and

22 ▶ urges Congress to preserve the traditional power of states over land and water use
23 and avoid unnecessary alterations to the regulatory reach of the proposed Clean
24 Water Act amendments.

25 **Special Clauses:**

26 None

27
28 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

29 WHEREAS, over the past 35 years, the federal Clean Water Act, supported by other

30 federal, state, and local laws, has governed the nation's waters and has helped ensure that
31 Americans enjoy the cleanest rivers and lakes in the world;

32 WHEREAS, this landmark statute, further explained and clarified by subsequent
33 Supreme Court cases, has struck a proper balance between clean water and state, local, and
34 federal regulatory authority and responsibilities, while at the same time recognizing and
35 protecting state primacy over water jurisdiction;

36 WHEREAS, the proposed Clean Water Restoration Act of 2007, H.R. 2421 and S.
37 1870, and similar legislation, attempts to make extreme changes to the Clean Water Act and
38 threatens to destroy the careful inter-governmental balance that has been the hallmark of the
39 law throughout its long history;

40 WHEREAS, the proposed federal legislation would change federal jurisdiction over
41 water by expanding the definition from "navigable" to "waters of the United States" over
42 which federal jurisdiction extends;

43 WHEREAS, that language change would allow federal reach to explicitly include "all
44 interstate and intrastate waters and their tributaries . . . ", essentially establishing under
45 federal law that all wet areas within a state, or areas that have been wet at some time, would
46 fall under federal regulatory authority, including groundwater, ditches, pipes, streets, gutters,
47 desert features, and even pools and puddles;

48 WHEREAS, this legislation would give the United States Environmental Protection
49 Agency (EPA) and the United States Army Corps of Engineers (Corps) authority over "all
50 interstate and intrastate waters," including non-navigable waters, thereby granting to Congress
51 authority far beyond the original scope of the Clean Water Act;

52 WHEREAS, this legislation patently exceeds Congress's constitutional powers, as
53 "non-navigable" waters are unlikely to fall under the Commerce Clause, the
54 principle-enumerated power upon which Congress has relied for passage of environmental
55 laws;

56 WHEREAS, this legislation would dramatically expand the reach of the federal
57 bureaucracy, would fundamentally erode the ability of state and local governments to manage

58 their own water resources, and would cause an avalanche of new unfunded mandates to
59 envelope state and local governments;

60 WHEREAS, this legislation would essentially grant the EPA and the Corps veto
61 authority over local land use policies, and would grant the EPA and the Corps authority to
62 regulate virtually all activities, private or public, that may affect "waters of the United States,"
63 regardless of whether the activity is occurring in, or may impact, water at all;

64 WHEREAS, this legislation would eliminate existing regulatory limitations that allow
65 common sense uses, including prior converted cropland and waste treatment systems, since the
66 proposed definition does not include any regulatory limitations;

67 WHEREAS, this omission is particularly important because the existing rules
68 acknowledge two important limitations covering prior converted cropland and waste treatment
69 systems designed to meet Clean Water Act requirements;

70 WHEREAS, this legislation's expanded definition would burden state and local
71 governments administratively and financially and would thrust unfunded mandates on state
72 and local governments by imposing significant new administrative responsibilities upon them;

73 WHEREAS, this legislation would require changes at the state level by impacting
74 comprehensive land use plans, floodplain regulations, building and special codes, and
75 watershed and storm water plans;

76 WHEREAS, local governments will also be impacted because they are responsible for
77 a number of public infrastructure projects, including water supply, solid waste disposal, road
78 and drainage channel maintenance, storm water detention, mosquito control, and construction
79 projects; and

80 WHEREAS, local government efforts to carry out maintenance of government-owned
81 buildings, including hospitals, schools, and municipal offices, could also be adversely
82 impacted;

83 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
84 Governor concurring therein, express its strong opposition to any federal legislation that would
85 expand the reach and scope of the Clean Water Act, and express their commitment to the goals

86 and objectives of the original Act to keep our waters clean.

87 BE IT FURTHER RESOLVED that the Legislature and the Governor assert that it is
88 not in the nation's interest to regulate ditches, culverts and pipes, desert washes, dry arroyos,
89 farmland, and treatment ponds as "waters of the United States" and therefore subjecting these
90 waters to all of the requirements of federal regulation.

91 BE IT FURTHER RESOLVED that the Legislature and the Governor call upon
92 Congress to preserve the traditional power of states over land and water use and avoid
93 unnecessary alterations to the regulatory reach of the Clean Water Act amendments as
94 proposed in the Clean Water Restoration Act of 2007 and similar federal legislation.

95 BE IT FURTHER RESOLVED that the Legislature and the Governor express their
96 opposition to enacting the Clean Water Restoration Act of 2007 as proposed, as being without
97 merit or justification based on 35 years of experience under the original Act as modified by
98 court decisions and practice.

99 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority
100 Leader of the United States Senate, the Speaker of the United States House of Representatives,
101 and to the members of Utah's congressional delegation.