



"Serving Western Legislatures"

RESOLUTION 10-01

Resolution Regarding Amendments to the Federal Water Pollution Control Act, as proposed by S. 787 and H.R. 5088, in the 111th Congress

WHEREAS The Council of State Governments – *WEST* is a non-profit, non-partisan organization serving the legislatures of the 13 Western States, providing a platform of regional cooperation and continuous exchange of information; and

WHEREAS the CSG-*WEST* Western Water and Public Lands Committee provides western legislators a forum to discuss growing and competing demands of western water and public lands; and

WHEREAS The CSG-*WEST* Western Water and Public Lands Committee also promotes partnerships with regional organizations such as the Western Governors' Association, Western States Water Council, and others in an effort to develop robust regional strategies to address western water and public land issues; and

WHEREAS The West holds the vast majority of our nation's federal lands and has experienced the highest level of population growth, thereby straining the region's limited water resources; and

WHEREAS federalism is an integral and founding principle of the government of the United States of America; and

WHEREAS the 10th Amendment of the United States Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people; and

WHEREAS CSG-*WEST* promotes a strong role and robust dialogue between the states and the federal government, and among the U.S. states themselves, which are the laboratories of democracy; and

WHEREAS U.S. Senate Bill 787, as introduced on April 4, 2009, is aimed at 1) reaffirming the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 to restore and maintain the chemical, physical, and biological integrity of the waters of the United States; and 2) to clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act; and

WHEREAS Senate Bill 787 was referred and is currently in the Senate Environment and Public Works Committee; and

WHEREAS House of Representatives Bill 5088, titled “America’s Commitment to Clean Water Act,” was introduced April 21, 2010 and referred to the House Subcommittee on Water Resources and Environment;

WHEREAS Senate Bill 787 and House of Representatives Bill 5088, if adopted, would amend the Federal Water Pollution Control Act by striking the words “navigable waters of the United States” and replacing it with “waters of the United States,” and

WHEREAS the legislation defines the term “waters of the United States” to mean all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters, including lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds, all tributaries of any of the above waters; and

WHEREAS Senators Max Baucus of Montana, Barbara Boxer of California, Amy Klobuchar of Minnesota and others introduced amendments now within Senate Bill 787 that would make it explicit that the purpose of the Clean Water Restoration Act is to return to pre- *Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers (2001)* and pre- *Rapanos v. United States (2006)* Supreme Court decisions and deletes language that would interpret the legislation to expand the jurisdiction of the statute beyond that point; and

WHEREAS the members of CSG-WEST are concerned that replacing the words “navigable waters of the United States” would diminish the historical, traditional role of states to regulate and manage intrastate water resources within their jurisdictions; and

WHEREAS notwithstanding the amendments to Senate Bill 787, the members of CSG-WEST remain concerned that the passage of Senate Bill 787, as well as House of Representatives Bill 5088, in their current form, would further blur the jurisdictional authority among the federal government and states, and widening the scope of federal government authority over water resources under the Federal Water Pollution Control Act;

NOW THEREFORE BE IT RESOLVED THAT

- The members of CSG-*WEST* respectfully request that the author and members of the United States Congress work to amend Senate Bill 787 and House of Representatives 5088, including the exclusion or modification of the term “waters of the United States,” to ensure that state authority over intrastate water resources is not preempted; and
- The members of CSG-*WEST* urge the author and members of Congress to communicate and engage with Western state legislators and stakeholders to address specific concerns related to the expansion of federal jurisdiction under the Federal Water Pollution Control Act.

**Adopted by the CSG-*WEST* Executive Committee on September 14, 2010
Assembled at the 63rd Annual Meeting in Sun Valley, Idaho**