

Sixty-fourth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE CONCURRENT  
RESOLUTION NO. 3009**

Introduced by

Representatives D. Anderson, Hofstad, Hunskor, D. Johnson, Kempenich

Senators Carlisle, Miller, O'Connell, Sinner

1 A concurrent resolution urging Congress to pass H.R. 5078 or otherwise address the concerns  
2 of the agriculture industry, water development industry, and water management industry, in  
3 defining the "waters of the United States" in the Clean Water Act.

4 **WHEREAS**, the Clean Water Act compels the Environmental Protection Agency (EPA) and  
5 the United States Army Corps of Engineers (Corps) to protect the integrity of the "waters of the  
6 United States"; and

7 **WHEREAS**, the term "waters of the United States" was not defined in statute so it has been  
8 argued that the term means many things from the spectrum of navigable waters to anything that  
9 affects navigable waters; and

10 **WHEREAS**, H.R. 5078 of the 113<sup>th</sup> Congress prohibits the EPA and the Corps from  
11 developing, finalizing, adopting, implementing, applying, administering, or enforcing the  
12 proposed rule entitled, "Definition of 'Waters of the United States' Under the Clean Water Act,"  
13 issued on April 21, 2014, or the proposed guidance entitled, "Guidance on Identifying Waters  
14 Protected By the Clean Water Act," dated February 17, 2012; and

15 **WHEREAS**, H.R. 5078 also prohibits using the proposed rule or proposed guidance, any  
16 successor document, or any substantially similar proposed rule or guidance as the basis for any  
17 rulemaking or decision regarding the scope or enforcement of the Clean Water Act; and

18 **WHEREAS**, H.R. 5078 requires the Corps and the EPA to withdraw the interpretive rule  
19 entitled, "Notice of Availability Regarding the Exemption from Permitting Under Section 404(f)(1)  
20 (A) of the Clean Water Act to Certain Agricultural Conservation Practices," issued on April 21,  
21 2014; and

22 **WHEREAS**, H.R. 5078 requires the Corps and the EPA to consult with relevant state and  
23 local officials to develop recommendations for a regulatory proposal that would identify the  
24 scope of waters covered under the Clean Water Act and the scope of waters not covered;  
25 provide for the public review and comment of a draft report that includes a recommendation

1 only if consensus has been reached with regard to the recommendation among the Corps, the  
2 EPA, and state and local officials; publish a final report; and report to Congress on the  
3 recommendations;

4 **NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF**  
5 **NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

6 That the Sixty-fourth Legislative Assembly urges the Congress of the United States to pass  
7 H.R. 5078 or otherwise address the concerns of the agriculture industry, water development  
8 industry, and water management industry, in defining the "waters of the United States" in the  
9 Clean Water Act; and

10 **BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution  
11 to the Commanding General of the United States Army Corps of Engineers, the Administrator of  
12 the Environmental Protection Agency, and to each member of the North Dakota Congressional  
13 Delegation.