

CS/HM 1401

2011

1 House Memorial

2 A memorial to the Congress of the United States, urging
3 Congress to keep the United States Environmental
4 Protection Agency from overextending its mandate and to
5 direct the agency not to intrude into Florida's previously
6 approved clean water program.

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8 WHEREAS, on December 7, 2010, the State of Florida filed a
9 lawsuit against the United States Environmental Protection
10 Agency over federal intrusion into Florida's clean water
11 program, and

12 WHEREAS, the lawsuit alleges that the agency's action is
13 inconsistent with the intent of Congress when it based the Clean
14 Water Act on the idea of cooperative federalism whereby the
15 states would be responsible for the control of water quality
16 with oversight by the agency, and

17 WHEREAS, the control of nutrient loading from predominately
18 nonpoint sources involves traditional states' rights and
19 responsibilities for water and land resource management, which
20 Congress expressly intended to preserve in the Clean Water Act,
21 and

22 WHEREAS, the lawsuit specifically alleges that the agency's
23 rule and its January 2009 necessity determination for adopting
24 numeric nutrient water quality criteria for Florida's waters
25 were arbitrary, capricious, and an abuse of discretion, and
26 requests the court to enjoin the agency's administrator from
27 implementing the numeric water quality criteria for Florida in
28 the rule, and

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29 WHEREAS, prior to the agency's announcement that it would
30 be implementing new rules for Florida, the state had been
31 diligently working through its Total Maximum Daily Load Program
32 to adopt numeric standards for impaired bodies of water, and

33 WHEREAS, the agency had already approved Florida's Total
34 Maximum Daily Load Program on the basis that it was sufficient
35 to meet the requirements of the Clean Water Act, as referenced
36 in a letter dated September 28, 2007, and

37 WHEREAS, as recently as January 2010, the agency praised
38 Florida for implementing "some of the most progressive nutrient
39 management strategies in the nation," and the Total Maximum
40 Daily Load Program had a timetable for implementation through
41 2011, and

42 WHEREAS, despite the fact that Florida was working to
43 implement its approved program and was seeing successes, the
44 agency reversed its determinations in 2009 and informed the
45 state that new federal rules and criteria would be developed and
46 implemented by the agency, preempting the approved state
47 program, and

48 WHEREAS, according to the state's lawsuit, the agency has
49 continued to rely on a methodology that is neither
50 scientifically sound nor site specific for Florida's waters, and

51 WHEREAS, in April, the agency's own Science Advisory Board
52 joined the Florida Department of Environmental Protection, the
53 Florida Department of Agriculture and Consumer Services, the
54 University of Florida's Institute of Food and Agricultural
55 Sciences, the Florida Legislature, and others in expressing
56 serious concerns that the agency's methods for developing

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57 | numeric nutrient water quality criteria are scientifically
58 | flawed, and

59 | WHEREAS, the State of Florida has significant concerns with
60 | regard to the cost of implementing the new numeric nutrient
61 | water quality criteria proposed by the agency, NOW, THEREFORE,

62 |

63 | Be It Resolved by the Legislature of the State of Florida:

64 |

65 | That the Congress of the United States is urged to keep the
66 | United States Environmental Protection Agency from overextending
67 | its mandate and to direct the agency not to intrude into
68 | Florida's previously approved clean water program.

69 | BE IT FURTHER RESOLVED that copies of this memorial be
70 | dispatched to the President of the United States, to the
71 | President of the United States Senate, to the Speaker of the
72 | United States House of Representatives, and to each member of
73 | the Florida delegation to the United States Congress.