

1 *Kapp H* JOINT RESOLUTION NO. *43* *Sumner*  
 2 INTRODUCED BY *George Conway Meyer D. Kauf* *Ellison*  
 3 *BURNETT Peter* *John* *NATH* *Sehat*  
 4 *Wyrick Day* *James* *Winter* *Mark*  
 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
 5 REPRESENTATIVES OF THE STATE OF MONTANA URGING REPEAL OF  
 6 SECTION 404 OF THE FEDERAL WATER POLLUTION CONTROL ACT.

8 WHEREAS, Section 404 of the Federal Water Pollution  
 9 Control Act (Public Law 92-500) is an unconstitutional  
 10 delegation of legislative authority to the military; and

11 WHEREAS, Section 404 violates the traditional  
 12 separation of military and civilian departments,  
 13 unreasonably conferring civilian authority on the United  
 14 States Army; and

15 WHEREAS, the United States Army is not a suitable or  
 16 practicable body for conferral of executive regulatory  
 17 agency powers; regulatory powers are traditionally conferred  
 18 on nonmilitary executive agencies, except for specific  
 19 military functions; and

20 WHEREAS, Section 404 unconstitutionally confers  
 21 jurisdiction upon the Army for all waters of the United  
 22 States, not merely navigable waters, thus violating the  
 23 traditional constitutional doctrine of state's rights  
 24 because nonnavigable waters are outside the area of  
 25 interstate commerce and within the area of state

1 jurisdiction; and  
 2 WHEREAS, Section 404 would cover residential property,  
 3 and through exceptions, even cover titularly exempted  
 4 farmlands, which is a gross violation of the police and  
 5 public health and safety jurisdiction of the states.

7 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
 8 OF REPRESENTATIVES OF THE STATE OF MONTANA:

9 (1) That the U.S. Congress is urged to repeal Section  
 10 404 of the Federal Water Pollution Control Amendments of  
 11 1972 as an unconstitutional delegation of authority.

12 (2) That the Attorney General of Montana is also  
 13 directed to file an action, in the name of the people of the  
 14 State of Montana, in Federal District Court, to have that  
 15 section of the act declared unconstitutional. The Attorney  
 16 General is also directed to contact the Attorneys General of  
 17 each of the states and to use his best efforts to enlist  
 18 their support for a joint suit by the several states against  
 19 the United States Army Corps of Engineers and the United  
 20 States Government for Section 404's violation of "state's  
 21 rights".

-End-

INTRODUCED BILL

*HR 43*

Approved by Committee on Judiciary

1 *Kapp H* JOINT RESOLUTION NO. *43* *Samson*  
 2 INTRODUCED BY *George Courson Meyer Kauf* *Ellison*  
 3 *BURNETT Pater Aldo James NATHAN Seplat*  
 4 *Wyrick Day* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
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8 WHEREAS, Section 404 of the Federal Water Pollution Control Act (Public Law 92-500) is an unconstitutional delegation of legislative authority to the military; and

11 WHEREAS, Section 404 violates the traditional separation of military and civilian departments, unreasonably conferring civilian authority on the United States Army; and

15 WHEREAS, the United States Army is not a suitable or practicable body for conferral of executive regulatory agency powers; regulatory powers are traditionally conferred on nonmilitary executive agencies, except for specific military functions; and

20 WHEREAS, Section 404 unconstitutionally confers jurisdiction upon the Army for all waters of the United States, not merely navigable waters, thus violating the traditional constitutional doctrine of state's rights because nonnavigable waters are outside the area of interstate commerce and within the area of state

1 jurisdiction; and  
2 WHEREAS, Section 404 would cover residential property, and through exceptions, even cover titularly exempted farmlands, which is a gross violation of the police and public health and safety jurisdiction of the states.

7 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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12 (2) That the Attorney General of Montana is also directed to file an action, in the name of the people of the State of Montana, in Federal District Court, to have that section of the act declared unconstitutional. The Attorney General is also directed to contact the Attorneys General of each of the states and to use his best efforts to enlist their support for a joint suit by the several states against the United States Army Corps of Engineers and the United States Government for Section 404's violation of "state's rights".

-End-

*HWR43*

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 3 *BURNETT Peter Aldo Grand NAYHE Siglet*  
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-End-

*HR 43*

1 HOUSE JOINT RESOLUTION NO. 43  
 2 INTRODUCED BY FABREGA, CONROY, MEYER, KROPP,  
 3 ELLISON, O'KEEFE, SEVERSON, BURNETT, MYRICK, MARKS,  
 4 DAY, PORTER, FEDA, BRAND, SIVERTSEN, NATHE, SEIFERT

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