

July 16, 2018

The Honorable Lamar Alexander  
Chairman  
Subcommittee on Energy and Water Development  
Committee on Appropriations  
United States Senate  
124 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Alexander:

As Executive Director of the Western Governors' Association, I am writing to express concern with language included in House Report 115-697, the House Appropriations Committee report accompanying the bill making appropriations for energy and water development for FY 2019 and, by extension, H.R. 5895, the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019.

Specifically, the report language states that "the Committee is concerned that that infrastructure projects across the country are being impacted by unnecessary and unlimited delays in the section 401 water quality certification process. The Corps is encouraged to consider providing districts with additional guidance on this issue."

I refer you to the attached June 4, 2018 letter, in which Western Governors urge Congressional leadership to reject any legislative or regulatory effort that may diminish, impair or subordinate states' authority under Section 401 of the federal Clean Water Act (CWA).

Western Governors recognize the importance of partnerships between states and federal agencies. To implement the CWA, Congress designated states as co-regulators under a system of cooperative federalism which rejects a one-size-fits-all approach to water management and protection by enabling states to implement the CWA with flexibility.

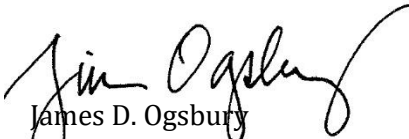
Western Governors assert that any legislative or regulatory effort to streamline environmental permitting should be developed in consultation with states and must not be achieved at the expense of state authority under the CWA, nor impair states' sovereign authority over the management and allocation of their water resources.

Reducing the states' Section 401 authority and vital role maintaining water quality within their borders would inflict serious harm to the division of authority established by the U.S. Constitution and reinforced statutorily in the CWA. Western Governors implore you to ensure that the CWA continues to effectively protect water quality while maintaining the proper balance between state

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and federal authorities. Please feel free to contact me if you have any questions about the Governors' position on this important matter.

Sincerely,



James D. Ogsbury  
Executive Director

Attachment

cc: The Honorable Bill Haslam, Governor of Tennessee

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June 4, 2018

The Honorable Paul Ryan  
Speaker of the House  
U.S. House of Representatives  
H-232 U.S. Capitol  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
S-230 U.S. Capitol  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives  
H-204 U.S. Capitol  
Washington, D.C. 20515

The Honorable Charles Schumer  
Minority Leader  
U.S. Senate  
419 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senators McConnell and Schumer, and Representatives Ryan and Pelosi:

Western Governors are concerned about various proposals to alter the state certification process under Section 401 of the federal Clean Water Act (CWA). Western Governors urge Congress to reject any effort that may diminish, impair or subordinate our ability to protect water quality within the boundaries of our states.

States have primary legal authority over the allocation, administration, protection and development of water resources within their boundaries. In the West, water is a scarce resource that must be managed with sensitivity to social, environmental, and economic values and needs. Sustainability of our natural resources (especially water) is imperative to the West. Responsible growth and development, as well as proper environmental management, depend upon the recognition and preservation of state stewardship.

Western Governors recognize the importance of partnerships between states and federal agencies. To implement the CWA, Congress designated states as co-regulators under a system of cooperative federalism that recognizes state interests and authority.

Congress recognizes states' legal position in the CWA; Section 101 clearly expresses Congress's intent:

to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter...Federal agencies shall co-operate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources.

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A balanced system of cooperative federalism has enabled states to implement the CWA with flexibility. The Act recognizes that a one-size-fits-all approach to water management and protection does not accommodate the practical realities of geographic and hydrologic diversity.

A vital component of the CWA's system of cooperative federalism is state authority to certify and condition federal permits of discharges into waters of the United States under Section 401. This authority has helped ensure that activities associated with federally-permitted discharges will not impair states' water quality. The U.S. Supreme Court has addressed this issue of state authority and concluded that, "[s]tate certifications under [Section] 401 are essential in the scheme to preserve state authority to address the broad range of pollution." *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370 (2006), citing 116 Cong. Rec. 8984 (1970).

Western Governors understand the importance of regulatory efficiency and welcome efforts to streamline federal infrastructure permitting processes. We have actively pursued reforms that would incorporate early, meaningful, substantive, and ongoing consultation with states, through their Governors' offices, so that material impediments to efficient infrastructure development may be properly identified and addressed.

Reducing the authority and vital role of states in maintaining water quality within their borders would inflict serious harm to the division of authority established by the Constitution and recognized statutorily in the CWA. Any legislative or regulatory effort to streamline environmental permitting should be developed in consultation with states and must not be achieved at the expense of state authority under the CWA – nor impair states' sovereign authority over the management and allocation of their water resources. Western Governors implore you to ensure that the CWA continues to effectively protect water quality while maintaining the proper balance between state and federal authorities.

Sincerely,

  
Dennis Daugaard  
Governor of South Dakota  
Chair, WGA

  
David Ige  
Governor of Hawaii  
Vice Chair, WGA