

November 18, 2019

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

We write to express our concerns about any legislation or federal action that would alter states' water quality certification processes under Section 401 of the federal Clean Water Act (CWA), and we urge Congress to reject any proposed legislative changes that may diminish, impair or subordinate states' authority under the CWA or the ability of states and their designated entities to manage or protect water resources.

To implement the regulatory programs of the CWA, Congress purposefully designated states as co-regulators under a system of cooperative federalism that recognizes state interests and authority. This approach continues to serve the nation well, as water quality has improved substantially since the CWA's enactment over 45 years ago. In Section 101 of the CWA, Congress clearly expressed its 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 effectively and with flexibility while protecting states' constitutional authority over their water resources. The CWA correctly rejects a one-size-fits-all approach to water management and protection which cannot accommodate the practical realities of geographic and hydrologic diversity among states. By enacting environmental statutes that allow states to maintain lead roles, Congress has recognized that states and localities are best suited to design and implement regulatory strategies and certification programs that protect human health and the environment in a manner that appropriately accounts for local needs and conditions.

A vital component of the CWA's system of cooperative federalism is the authority of states 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 state water quality. In its most recent ruling on CWA Section 401, the U.S. Supreme Court 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).

Since the enactment of the CWA, states have exercised their authority under Section 401 efficiently, effectively, and equitably. We question the need for any legislation that would curtail or reduce the scope of state authority under the CWA or the fundamental authority of states to manage water quality within their boundaries. Instances of delays or denials of state water quality certifications are extremely limited. Further, where project proponents wish to contend that a state has exceeded or violated its authority under Section 401, the CWA provides effective avenues for legal challenges to that state's exercise of authority.

Any legislation that may diminish, impair, or subordinate the vital role of states under the CWA to maintain water quality within their boundaries would inflict serious harm to the division of state and federal authorities established under the Constitution, as well as the CWA. Efforts to streamline environmental permitting should be informed through consultation with states and must not be achieved at the expense of state authority. We urge Congress to continue its historic recognition of, and deference to, states' sovereign authority over the management and allocation of their water resources. We implore you to ensure that the CWA continues to effectively protect water quality while maintaining the proper balance between state and federal authorities.

Sincerely,

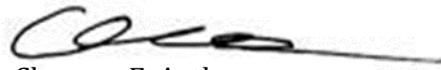

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Tim Storey
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Executive Director
National Association of Counties



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CEO and Executive Director
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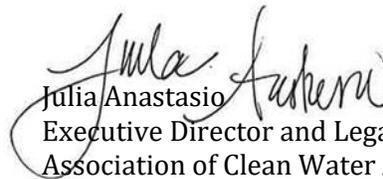
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