

August 9, 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  
United States 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  
United States Senate  
419 Hart Senate Office Building  
Washington, D.C. 20510

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

We write to express our concerns about various proposals to alter the state certification process under Section 401 of the federal Clean Water Act (CWA). Because each state is unique, we need the flexibility and authority to address our individual water needs. We urge Congress to reject any legislative or administrative effort that would diminish, impair or subordinate states' ability to manage or protect water quality within their boundaries.

States have primary legal authority over the allocation, administration, protection and development of their water resources. Responsible growth and development, as well as proper environmental management, depend upon the recognition and preservation of state stewardship.

We recognize the importance of partnerships between states and the federal government. To implement the CWA, Congress purposefully designated states as co-regulators under a system of cooperative federalism that recognizes state interests and authority. Congress recognizes the legal position of states 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

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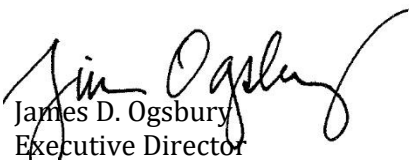
consult with the Administrator in the exercise of his authority under this chapter...Federal agencies shall co-operate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources.

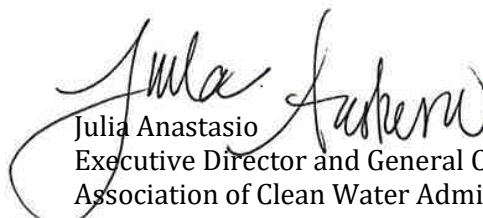
A balanced system of cooperative federalism has enabled states to implement the CWA effectively and with flexibility. The CWA correctly recognizes that a one-size-fits-all approach to water management and protection does not accommodate the practical realities of geographic and hydrologic diversity among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


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 state 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).

Curtailing or reducing state authority or the vital role of states in maintaining water quality within their boundaries would inflict serious harm to the division of state and federal authorities established under the Constitution and recognized by Congress 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 authority delegated to states under the CWA or any other federal law. Any such effort must also recognize, and defer 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,

  
James D. Ogsbury  
Executive Director  
Western Governors' Association

  
Julia Anastasio  
Executive Director and General Counsel  
Association of Clean Water Administrators

  
Virgil Moore  
President  
Association of Fish and Wildlife Agencies

  
Janne Christie  
Executive Director  
Association of State Wetland Managers

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Karen White  
Executive Director  
Conference of Western Attorneys General



David Adkins  
Executive Director / CEO  
Council of State Governments



Edgar Ruiz  
Executive Director  
Council of State Governments - West



Pommie Cline Martin  
President  
Western Interstate Region of NACo



Dr. Laura Nelson  
Chair  
Western Interstate Energy Board



Tony Willardson  
Executive Director  
Western States Water Council