

July 1, 2026

The Honorable Shelley Capito Chair
Environment & Public Works Committee

The Honorable Sheldon Whitehouse Ranking Member
Environment & Public Works

Dear Chair Capito, Ranking Member Whitehouse and members of the Committee,
We write to express our support for Section 401 of the Clean Water Act, which provides states and Tribes with essential authority to protect water quality from federally permitted activities within their jurisdictions. If Congress embarks on permitting reform legislation, we oppose changes to the Clean Water Act that would undermine state and Tribal authorities to protect their waterways.

Section 401 is a critical tool for supporting clean water across America which is overwhelmingly supported by the public. For example, a national survey conducted for the Walton Family Foundation shows 96% of voters say protecting the health and safety of drinking water is important.¹ Americans across the political spectrum value clean water for drinking, recreating, fishing, irrigating crop land, industrial operations, and many other uses, and understand that protecting clean water makes economic sense. The Association of Metropolitan Water Agencies has noted that weakening Section 401 specifically would shift the costs of providing safe drinking water from the polluting project to the ratepayer.²

Section 401 operates by empowering states and Tribes to review and add conditions to protect water quality when federal permitted or licensed projects involve a discharge into waters of the United States. Section 401 is key to the Clean Water Act's cooperative federalism approach, under which the federal and state governments share responsibility for protecting the nation's waterways from pollution. And it uniquely preserves the authority of states and Tribes to ensure their own water quality protections are met. For decades, states have used Section 401 to protect drinking water sources, safeguard aquatic habitat, and prevent degradation of water quality that would otherwise go unaddressed by federal permitting programs alone. States across the country have used Section 401 to protect water quality in a variety of ways including adding conditions to permits to mitigate pollution, protect riparian buffers, and address water quality and flow and temperature from dams.

Maintaining the existing, robust state and Tribal authority under Section 401 is critical for at least two reasons in this moment.

First, the Administration and some members of Congress have expressed interest in transferring from the federal government to the states more responsibility for ensuring future generations can

¹ <https://www.waltonfamilyfoundation.org/about-us/newsroom/poll-shows-near-universal-support-for-protecting-water-in-our-nations-lakes-streams-and-rivers>; <https://waterhub.org/polling-water-messages-that-bridge-divides/>.

² Ass'n of Metro. Water Agencies, Comments on Proposed Rule: Updating the Water Quality Certification Regulations, Docket ID No. EPA-HQ-OW-2025-2929, at 2 (Feb. 17, 2026), https://www.amwa.net/system/files/linked-files/AMWA%20Comments%20on%20EPA-HQ-OW-2025-2929_Updating%20the%20Water%20Quality%20Certification%20Regulations.pdf.

benefit from a healthy environment. It would be counterproductive to pursue that goal while simultaneously reducing the ability of states and Tribes to further that objective. In other words, policymakers should not transfer responsibilities to states and Tribes without preserving necessary authorities. This would be a recipe for unintended consequences and unnecessary water pollution.

Second, Section 401's requirements are triggered by a discharge to waters under the jurisdiction of the Clean Water Act.³ The geographic scope of those waters has been reduced significantly following the Supreme Court's decision in *Sackett v. EPA*. As a result, fewer projects will trigger Section 401 in the first place, which will pose new risks to water quality. Therefore, it is more important than ever that state and Tribes retain their authority to implement Section 401 where it continues to apply.

This authority includes state and Tribal ability to block projects under Section 401 that pose unacceptable risks to water quality that cannot be mitigated. But to be clear, those instances are extremely rare. In a survey of the Association of Clean Water Administrators' members from October 2025, a majority of responding states (13) reported no certification denials at all. Seventeen states indicated 0-2 certification denials. No state reported a certification denial rate higher than 3.5%.⁴ Similarly, EPA's Economic Analysis for its currently proposed rule implementing Section 401 shows that almost all permits issued by the Corps (which make up the overwhelming number of permits subject to Section 401) are either granted (89.2%) or waived (8.4%). Only 0.6% are denied.⁵

Relatedly, states and Tribes consistently issue Section 401 certification in a timely manner. The same Association of Clean Water Administrators' survey reported an average processing time for a Section 401 water quality certification application of 77 days—much shorter than the maximum one-year time frame that Section 401 allows. The main reasons reported for delays were that: the application was incomplete, the applicant or federal agency was unresponsive to inquiries for additional information, or the state lacked adequate staffing. If Congress is interested in improving Section 401, these are the issues that should be addressed—largely by supplementing water program appropriations to augment state and tribal staff that can be assigned to review Section 401 water quality certification applications.

Additionally, the administration is proposing many regulatory changes to the Clean Water Act that would further undermine implementation of this foundational water protection law, including further limiting the wetlands and other waters within the Act's scope and reducing state and Tribal Section 401 authority to protect waters within their boundaries. At minimum, any congressional consideration of further changes to section 401 is premature and must be delayed

³ *PUD No. 1 of Jefferson Cnty. v. Washington Dep't. of Ecology*, 511 U.S. 700, 707–08 (1994).

⁴ Ass'n of Cal. Water Agencies (ACWA), Letter to Peggy S. Browne, Acting Assistant Administrator for Water, U.S. Environmental Protection Agency, re: State Information Regarding Implementation of Clean Water Act Section 401 (Oct. 27, 2025), submitted as an attachment to, ACWA Comments on Proposed Rule: Updating the Water Quality Certification Regulations, EPA Docket ID No. EPA-HQ-OW-2025-2929-0150 (Feb. 17, 2026), <https://www.regulations.gov/comment/EPA-HQ-OW-2025-2929-0198>.

⁵ U.S. Env't Prot. Agency, Economic Analysis for the Proposed Rule: Updating the Water Quality Certification Regulations, Table A-2, at 42–43 (Jan. 2026), https://www.epa.gov/system/files/documents/2026-01/cwa401_proposed-rule-economic-analysis_jan2026_508c.pdf.

at least until we have clarity on how the existing law will be implemented by the administration.

We stand ready to improve the effectiveness of Section 401 of the Clean Water Act and provide detailed analysis on specific proposals. We can provide additional information, including examples of how states and Tribes have effectively applied Section 401. We look forward to working with you and your staff to protect clean water for all.

Sincerely,

Alabama Rivers Alliance

Alliance of Nurses for Healthy Environments

American Whitewater

Amigos Bravos

Atchafalaya Basinkeeper

Bayou City Waterkeeper

Bear Warriors United

Blue Water Baltimore

Cahaba River Coalition

Chesapeake Bay Foundation

Chesapeake Legal Alliance

Clean Water Action

Committee on the Middle Fork Vermilion River

Conservation Law Foundation

Earthjustice

Eastern PA Coalition for Abandoned Mine Reclamation

Endangered Habitats League

Environmental Law & Policy Center

Flow Water Advocates

Freshwater Future

Friends of Accotink Creek

Friends of Casco Bay

Friends of the Mississippi River

GreenLatinos

Gunpowder RIVERKEEPER
Harpeth Conservancy
Iowa Environmental Council
Kentucky Waterways Alliance
Lawyers for Good Government
League of Conservation Voters
Los Angeles Waterkeeper
Lower Susquehanna Riverkeeper Association
Market Square Presbyterian Church, Harrisburg, PA
Milwaukee Riverkeeper
Minnesota Center for Environmental Advocacy
Mississippi River Collaborative
Natural Resources Defense Council
North Carolina Conservation Network
Ohio River Foundation
One Mississippi
Orange County Coastkeeper
Passaic River Coalition
Penobscot Bay Waterkeeper
Potomac Riverkeeper Network
Russian Riverkeeper
Save the Great South Bay
Severn Riverkeeper
ShoreRivers Inc.
Sierra Club
Snake River Waterkeeper
Southern Environmental Law Center
SouthWings
The Water Collaborative of Greater New Orleans

Three Rivers Waterkeeper

Tualatin Riverkeepers

Waterkeeper Alliance

Waterkeepers Chesapeake

WV Rivers Coalition