April 2, 2019

The Honorable Steve Bullock, Chair
National Governors Association
444 North Capitol Street
Suite 267
Washington, D.C. 20001

Dear Governor Bullock:

States play an invaluable role in the protection and conservation of our nation's vital water resources. Through the model of cooperative federalism, the Clean Water Act made sure the protection of water quality was the shared responsibility between state and federal governments.

Specifically, Section 401 of the Clean Water Act supports this system of shared responsibility by providing federal and state governments distinct roles in certifying federally-permitted or licensed activities. States certify that discharges associated with projects requiring federal approval will comply with the applicable water quality requirements. And the federal government is obligated to implement the program consistent with the statute.

For nearly 50 years, Section 401 has ensured that states play a significant role in ensuring that discharges from federally permitted projects will not impair state water quality. For the vast majority of projects, states' Section 401 reviews have been efficient and consistent with the statute. However, confusion with the Section 401 review process can result in significant delays, increased costs, or even the abandonment of infrastructure projects when the timing and scope of the review exceeds the statutory mandate.

Our members build or support infrastructure like roads, bridges, pipelines, ports, power lines, and railroads to deliver critical goods and services to people across every state. This infrastructure contributes significantly to the U.S. and regional economies. Thousands of jobs and millions of families depend on the successful construction, operation, and maintenance of this infrastructure.

Section 401 was created to provide states a meaningful opportunity to protect their water resources. It should be a partnership between states and federal permitting agencies, with distinct roles for each. Recent court decisions have confirmed important statutory principles related to the time

period for review, waiver of the certification requirement, and the scope of certification review.[1] We believe opportunities exist to clarify and align legal precedent with clearer implementation of Section 401. Such clarification would benefit states, the federal government, our members, and, most importantly, the Americans who benefit from stronger and more efficient infrastructure.

We encourage NGA and its members to work with the Administration to clarify the Section 401 process in a way that ensures continued protection of water quality while maintaining the partnership between states and the federal government.

Sincerely,

Global Energy Institute, U.S. Chamber of Commerce

Independent Petroleum Association of America

Interstate Natural Gas Association of America

National Association of Manufacturers

Natural Gas Supply Association

[1] *Nat'l Fuel Gas Supply Corp. v. N.Y. State Dep't of Envtl. Conserv.* (2d Cir. No. 17-1164, Feb. 5, 2019); *Hoopa Valley Tribe v. FERC* (D.C. Cir. No. 14-1271, Jan. 25, 2019); *N.Y. State Dep't of Envtl. Conserv.* v. FERC, 884 F.3d 450, 455 (2018); *Millennium Pipeline Co. v. Seggos*, 860 F.3d 696 (2017).