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October 21, 2019

The Honorable Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Submitted via www.regulations.gov

RE: Docket No. EPA-HQ-OW-2019-0405

Dear Administrator Wheeler,

On behalf of the 86 undersigned environmental and public interest organizations, representing millions of members and supporters across the nation, we urge you to withdraw

your proposal, “Updating Regulations on Water Quality Certifications,” which would limit how states and authorized tribes manage their water and other natural resources under Section 401 of the Clean Water Act. We oppose these changes to the Clean Water Act that would undercut states’ and tribes’ ability to protect water bodies within their boundaries from destructive projects that require a federal license or permit.

For decades, states and tribes have relied on Section 401 of the Clean Water Act to protect local rivers, streams, wetlands, and other waters from pollution or destruction. Pipelines and other fossil fuel infrastructure, dams, river alterations and other massive projects can all harm water quality in many ways, including by filling in wetlands, damming rivers, and digging trenches through streams and other water bodies. It is critical for states and tribes to review these projects so they can decide to approve, reject, or request modifications to the terms of an application for a water quality certification in order to safeguard water resources. Another important aspect of Section 401 is that it allows residents of a state to submit comments or feedback during state and tribal reviews of projects.

Yet now the Environmental Protection Agency (EPA) wants to limit the amount of time states and tribes have to review projects, restrict their scope of review, and give federal permitting agencies the final word on whether or not a project should be certified. These proposed changes to the 401 Clean Water Act program will make it nearly impossible for states and tribes to make informed decisions and will also make it harder for meaningful public engagement during the decision making process.

Limited review time restrains capacity for meaningful evaluation: EPA is proposing to limit the time states and tribes have to review a water quality certification request to a “reasonable” amount of time, not to exceed one year for any reason. For Army Corps dredge and fill permits, EPA asserts sixty days is a sufficient review time, and also suggests a time period of under six months is adequate for states and tribes to complete their environmental review of projects. Especially problematic is that review time would begin once a certification request is made, not when an application is complete. Failure of the applicant to submit all necessary information would not be sufficient grounds for the application to be withdrawn and resubmitted with the necessary information, enabling for proper review. The one-size fits all approach, centrally administered by the federal agency issuing the permit or license almost assures that states and tribes won’t have the ability to gather all the information they need to comprehensively evaluate the potential environmental impacts of every project.

Narrowed scope of review eliminates ability to consider all impacts to water quality: EPA is also proposing to strip states and tribes of their authority to consider the overall health and biological integrity of water bodies when reviewing a certification request. Instead 401 certification decisions would only be able to consider harm caused by discharge of pollution from a point source--not erosion, sedimentation, or low stream flow--all factors that can severely impact water quality. For instance, this means states and tribes would no longer be able to require that federal dams maintain stream flow necessary for aquatic life or provide fish passage for spawning.

Giving federal agencies final word will burden already resource strapped states and tribes: Proposed changes to the water quality certification program would give the federal licensing or permitting agency the final say on whether a state’s or tribe’s decision to approve, reject, or

set conditions on a permit is “reasonable” and “consistent with the scope” of the Clean Water Act. If the permitting agency does not agree with a state’s or tribe’s decision it can override it, placing the burden on the state or tribe to file a legal challenge to overturn the agency ruling, all while allowing the project to proceed.

Limiting review time and restricting how states and tribes review projects could invite project proponents to game the system by submitting minimal data and ignoring a state’s or tribe’s request for any additional information. It is critical that states and tribes have adequate time to review applications for large, complex projects such as dams, pipelines and other fossil fuel infrastructure projects. Unreasonable time constraints and inadequate information could result in poor certification decisions that could cause degraded water quality and harm to public health and the environment.

Our organizations urge EPA to withdraw its proposal. Arbitrarily limiting states’ and tribes’ ability to protect water resources within their boundaries from destructive federal projects will harm the rivers, lakes, and drinking water sources our communities depend on. Insteading of stripping authority from states and tribes to safeguard their own resources, EPA should be working cooperatively with them to ensure our nation’s waters are not impaired by fossil fuel infrastructure, dams, or other large projects.

Sincerely,

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Alliance for the Great Lakes
Appalachian Mountain Club
Appalachian Trail Conservancy
Bucks Environmental Action
California Sportfishing Protection Alliance
California Wilderness Coalition
Clark Fork Coalition
Clean Fairfax
Clean Ocean Action
Clean Water Action
Center for Biological Diversity
Coalition to Ban Unsafe Oil Trains
Coalition to Protect New York
Common Ground Community Trust
Cooper River Indivisible
Delaware Riverkeeper Network
Delaware Township Citizens Against the Pipeline
Earthworks
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East Jersey Trout Unlimited
Endangered Habitats League

Environmental Justice Center of Chestnut Hill United Church
Environmental Law & Policy Center
Foothill Conservancy
Freshwater Future
Friends of the Earth
Friends of the Moshassuck
Georgia River Network
Global Village Farms
GreenLatinos
Gulf Coast Law & Policy Center
Healthy Gulf
Hip Hop Caucus
Illinois Council of Trout Unlimited
Jersey Coast Anglers Association
Kingston Greenways Association
Land and Water Sovereignty Campaign
League of Conservation Voters
Lower Susquehanna Riverkeeper Association
Lynnhaven River NOW
Massachusetts Rivers Alliance
Mississippi River Collaborative
Missouri Coalition for the Environment

Montana Trout Unlimited
Mountain Watershed Association
Multicultural Alliance for a Safe
Environment
National Latino Farmers & Ranchers Trade
Association
New England FLOW
New Jersey Highlands Coalition
New Jersey Skylands Sunrise Hub
New Jersey Sustainable Business Council
New Jersey Working Families
Ohio Environmental Council
Oil Change U.S.
Otsego 2000
OVEC-Ohio Valley Environmental Coalition
Pennsylvania Council of Churches
People Over Pipelines
Pipeline Awareness for the Northeast, Inc.
Project CoffeeHouse
Protecting Our Waters
Puget Soundkeeper Alliance
Rachel Carson Council
Rappahannock League for Environmental
Protection (RLEP)

Resist Spectra
Responsible Drilling Alliance (RDA)
River Network
Safe Energy Rights Group
Save Our Springs Alliance
Save Our Wild Salmon Coalition
Seneca Lake Guardian
Sierra Club
Sierra Club - New Jersey Chapter
Sisters of St. Dominic
South Yuba Citizens League
Tennessee Clean Water Network
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To Nizhoni Ani
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