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Section 401/Clean Water Act Process Improvements and Preservation of State Authority: Association of State Wetland Managers and Other Organizations February 20th Comments

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The Association of State Wetland Managers and other organizations submitted February 20th comments to the Acting Administrator of the United States Environmental Protection Agency (“EPA”) and the Assistant Secretary of the United States Army Corps of Engineers that included a paper titled:

Clean Water Act Section 401: Process Improvements and the Preservation of State Authority

The other organizations that are signatories to the submission include:

- Western Governors’ Association
- National Conference of State Legislatures
- Association of Clean Water Administrators
- Western States Water Council
- Council of State Governments – West

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or other applicable authorities, of a state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will comply with applicable state water quality standards. If not provided, the federal permit or license may not be granted. Further, states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

The previously referenced organizations note their awareness of efforts within the two agencies to develop rules, guidance, or policies that would modify state water certification procedures under Section 401 of the Clean Water Act. They state that:

Curtailing or reducing state authority under CWA Section 401, 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 by Congress.

As a result, the organizations prepared a list of what they describe as “potential process reforms” that are stated to potentially reduce the instances of certification delays or denials, while preserving the balance of state and federal powers in the implementation of the Clean Water Act. In addition, they note attachment of prior letters to the White House, EPA, and Congressional leadership addressing the issue.

The attached paper addresses topics such as:

- Preservation of Cooperative Federalism
- Timelines for State Review/Waiver of State Authority
- Increased Early Coordination and Communication Between Applicants of State/Federal Officials
- Scope of the State Review
- Data and Staffing

A copy of the letter and associated attachments can be found [here](#).