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(Docket No. EPA-HQ-OW-2025-2929)**

Environmental Protection Agency
1301 Constitution Avenue NW
Washington, D.C. 20004

RE: Comments on “Updating the Water Quality Certification Regulations,” 91 Fed. Reg. 2008 (Jan. 15, 2026), Docket No. EPA-HQ-OW-2025-2929

The Western Urban Water Coalition (WUWC)¹ appreciates this opportunity to comment on the Environmental Protection Agency’s (EPA) proposed rule regarding the manner in which states and Tribes process section 401 water quality certification requests under the Clean Water Act (CWA). 91 Fed. Reg. 2008 (Jan. 15, 2026). EPA proposes to reverse provisions from the 2023 rule,² explaining that the revisions would be more consistent with the text of the 1972 amendments to the CWA and would fulfill the Agency’s stated objective to “increase transparency, efficiency, and predictability” for certifying authorities, consistent with the CWA’s goal of water quality protection and cooperative federalism.

As discussed in its prior comments on the 2023 rule,³ WUWC supports EPA’s efforts to clarify certain 401-related processes to improve timeliness of certification decisions. Accordingly, WUWC supports the proposed rule’s clarification of certain aspects of the scope and process for 401 certification including the efforts to ensure that the process is not extended beyond a reasonable period of time. WUWC is also concerned, however, that frequent and significant changes to the 401 certification process may increase uncertainty for applicants, particularly on applications for major water infrastructure development projects, and increase the regulatory burden for states and Tribes to protect the quality of their waters. Many of our members have

¹ WUWC consists of the following members: **Arizona** (Central Arizona Project, City of Phoenix and Salt River Project); **California** (East Bay Municipal Utility District, Eastern Municipal Water District, City of Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and City and County of San Francisco Public Utilities Commission); **Colorado** (Aurora Water, Colorado Springs Utilities, and Denver Water); **Idaho** (City of Boise); **Nevada** (Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority); **New Mexico** (Albuquerque Bernalillo County Water Utility Authority); **Utah** (Salt Lake City Public Utilities and Washington County Water Conservancy District); and **Washington** (Seattle Public Utilities). Seattle Public Utilities does not participate in the submission of these comments.

² *Clean Water Act Section 401 Certification Rule*, 88 Fed. Reg. 66558 (Sept. 27, 2023) (“2023 Rule”).

³ WUWC Comment Letter on CWA Section 401 Notice of Proposed Rulemaking (Aug. 5, 2022), ID EPA-HQ-OW-2022-0128-0109, <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0128-0109>.

FERC licenses, and some are involved in the multi-year process for renewing these licenses. Our members also have federal permits and authorization for the important infrastructure that they own and operate consistent with water supply plans that look decades into the future. WUWC provides the following comments and recommendations to provide for durable CWA procedures and sustainable implementation of EPA's goal of reaffirming principles of the 1972 CWA amendments with increasing "transparency, efficiency, and predictability" in the certification process.

Introduction

WUWC was established in 1992 to address the West's unique water supply and water quality challenges that threaten the economic sustainability and growth of the western population centers. WUWC consists of the largest urban water utilities in the West, which together serve more than 40 million urban water consumers in 21 major metropolitan areas across eight states. Some of these utilities also operate wastewater, stormwater, natural gas, and electric, including hydroelectric, facilities for their customers.

WUWC members are public utilities committed to delivering reliable, high-quality urban water supply for present and future generations. As operators of urban water supply systems, members serve the health and safety, environmental, and economic needs of their communities around the clock, every day of the year. WUWC advocates for effective and practicable approaches to the implementation of environmental protection programs in a time when water sources are being affected by extreme climate and other factors and the development of sustainable supplies is vital. The replacement of aging water systems and the development of new water infrastructure is critical to complement the significant water conservation steps already being taken by western municipal water users to meet the challenges of climate-related events like droughts, wildfires, and floods, as well as the public safety threats of seismic events and facility failures. Regulatory reform, particularly pertaining to the CWA, is necessary to ensure resilient and reliable urban water supplies in the West.

WUWC has historically been, and continues to be, in full support of the goals of the CWA. Its members have a strong interest in clean water for municipal water supplies and in the regulatory processes protecting water quality. Section 401 of the CWA is of great significance to WUWC members, who, as municipal water providers, invest heavily in cost-effective and efficient water systems across the western United States. In addition, many of our members are multi-service utilities who also provide stormwater and wastewater services to our customers that trigger regulatory oversight. WUWC supports predictability and certainty in section 401 certification.

Throughout its 34-year history, WUWC has extensive experience working with EPA and various federal agencies on initiatives related to the CWA. With regard to the CWA, we have appeared before congressional committees, met with federal agencies, participated in workshops and roundtable discussions, commented on proposed EPA-specific guidance and rulemaking, and been a party to litigation. And, of course, WUWC members engage regularly with the federal agencies in obtaining authorizations for facilities and operations requiring federal approval on or adjacent to federal lands and waters. As a result, WUWC members are active collaborating partners with the federal agencies and a variety of stakeholders. WUWC is prepared to assist EPA in this regulatory process, most specifically on how an improved section 401 rule can support water

providers in the West while protecting water quality. The comments set forth in this letter are offered in furtherance of these general goals.

Specific Comments

WUWC supports EPA's effort to create a more "transparent, efficient, and predictable" certification process. WUWC endorses the goal of maintaining procedural clarity, particularly the enforcement of the one-year "reasonable period of time" to act on certification requests, which is essential for the planning and operation of critical western water infrastructure.

A. Definition of "Reasonable Period of Time"

Section 401 requires states and Tribes to make certification decisions within a "reasonable period of time," not to exceed one year after receipt of a request. The proposed rule enforces this statutory limit by clarifying that the reasonable period begins upon receipt of a "request for certification" and cannot be extended beyond one year. The proposal also would state explicitly that the certifying authority may not request the applicant to withdraw a request for certification and may not take any action to extend the reasonable period of time except by agreement with the federal agency. Additionally, EPA proposes retaining the requirement for a project proponent to request a pre-filing meeting with the certifying authority at least 30 days before submitting a water quality certification request, while explicitly granting certifying authorities the flexibility to waive or shorten the time requirement.

WUWC supports these provisions, as they provide a clear process that allows federal permitting agencies to obtain timely decisions to ensure that applications are not unreasonably delayed. WUWC members operate complex infrastructure projects that require the ability to accurately plan around permitting timeframes and vigorously endorse the proposed rule's strict adherence to the one-year statutory deadline.

By establishing a standardized definition of a "request for certification," and prescribing the contents of a request, the proposed rule would eliminate the leeway that previously allowed certifying authorities to delay the start of the review period indefinitely by deeming applications "incomplete." Coupled with the explicit prohibition on the practice of "coordinated withdrawal and resubmission," a practice that has been deemed to be inconsistent with the regulatory text, the proposal has the ability to promote greater certainty in the 401 certification process.

B. State Authority to Impose Conditions and Scope of Federal Agency Review

WUWC supports the proposed rule's intent of limiting a certifying authority's ability to retain the authority for broad and unilateral modifications of a grant of certification. The 2023 Rule sought to expand state and Tribal enforcement authority independent of the permitting agency, and we support establishing limits on this. WUWC has long maintained that once a certification condition is incorporated into a federal license or permit, the enforcement of those conditions is the sole jurisdiction of the federal agency.

C. Request for Explicit Clarification of Federal Exclusivity

WUWC is concerned that the breadth of the proposed changes to the 401 certification process increases uncertainty for applicants for major water infrastructure development projects at a time when states and Tribes face declining resources to protect the quality of their waters. The proposed rule could shift the regulatory burden to the states and make it harder to protect downstream source water quality where there are different applicable state standards, which is particularly true along the Colorado River. To the extent the federal standards are narrowed, this can weaken the states' ability to protect the quality of their waters. With less federal regulatory protections, the burden falls on the states to fill the regulatory gap, and where the standards vary across states, it places more of a burden on the states with higher standards to address. WUWC requests that the Final Rule explicitly reinstate the language from the 2020 Rule stating that “[t]he Federal agency shall be responsible for enforcing certification conditions that are incorporated into a federal license or permit.” Without this explicit clarification, certifying authorities may continue to attempt independent enforcement actions or impose “continuing oversight” conditions, undermining the finality of the federal permitting process. Explicitly vesting enforcement with the federal agency aligns with the “discharge-only” scope of the proposed rule and ensures that section 401 remains a check on federal authority at the time of licensing, and appropriately assigns responsibility for the enforcement of certifications.

Conclusion

WUWC remains committed to the dual goals of improving water quality and ensuring the delivery of reliable urban water supplies. We encourage EPA to pursue predictable and durable CWA procedures, recognizing the goal of “transparency, efficiency, and predictability” in the certification process.

Finally, WUWC emphasizes that for our members—many of whom are or will likely be applicants for FERC licensing—a critical attribute of a 401 certification process is its durability. Frequent changes in the section 401 regulations complicate long-term capital planning, permitting, and risk assessment. We urge the EPA to ground the Final Rule in a durable legal framework that provides a consistent, predictable standard for the coming decades. Our members need to know that the rules in place when they initiate a relicensing process, including the timing of certification decisions, will remain the rules when their certification is ultimately issued.

Thank you for the opportunity to provide these comments. If you have any questions regarding these comments, please contact me at (951) 203-2804 or Walshj@emwd.org.

Sincerely,



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Eastern Municipal Water District