

October 2, 2026

The Honorable Sheldon Whitehouse
Ranking Member
Senate Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy & Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Schumer
Leader
Senate Democrats
Room 2-221, The Capitol
Washington, D.C. 20510

The Honorable Richard Durbin
Ranking Member
Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Ranking Members Whitehouse, Heinrich, and Leader Schumer,

On behalf of our 122 organizations and our millions of members and supporters, we write to express our strong opposition to the Bipartisan American Affordability and Jobs Act of 2026 permitting reform deal that will eviscerate longstanding protections under the Clean Water Act, undermine state and tribal authority to protect waterways, and allow environmentally damaging data centers, fossil fuel, and other large-scale industrial projects to move forward without meaningful public review. At a time when the Supreme Court has already gutted many key protections of the Clean Water Act and the Trump administration has proposed the narrowest protections for rivers, streams, lakes, and wetlands in the 50-year history of the law, this legislation would cause even deeper damage when Congress should be acting to strengthen our bedrock environmental law protecting water quality.

Undermining State and Tribal Authority in Section 401 of the Clean Water Act (Section 1202)

Section 401 is a critical safeguard that allows states and tribes to protect their water quality, uphold their own laws and exercise their sovereignty, and defend communities from water pollution and other impacts associated with large-scale industrial projects. However, Section 1202 of this proposal would curtail long-held authority to object to or condition a project by limiting the scope of review to a narrow set of impacts and shifting the burden to the state to meet an exceptionally high evidentiary standard of “clear and convincing evidence” to justify denying or conditioning certification. If a condition is imposed, states again must prove that any condition imposed is the “least burdensome option.” And if a state fails to act on a project within the review period of up to a year, its authority to certify that the project complies with the Clean Water Act is waived, and if a state affirmatively waives certification during that time, no judicial review is available.

This change would have a dramatic practical effect and chill ongoing efforts to protect communities from pipeline and transmission projects. In New Jersey, for example, the Third Circuit recently vacated the certification of the proposed NESE natural gas pipeline that would have resulted in polluted water for thousands of New Jersey families in historically underserved communities because it ultimately fails

to show compliance with state water quality standards.¹ In addition, massive transmission line projects like the Valley North, which will connect a coal-fired power plant to data centers, will cut across West Virginia, Virginia, and Maryland and potentially impact several iconic rivers and waterbodies, including the Potomac. Without authority under the Clean Water Act, many of these harms will be left unaddressed. Under the Bipartisan American Affordability and Jobs Act, these projects, and many others like them, could move forward without any specific protection for water quality in the communities they will impact.

Weakening Nationwide Permitting and General Permitting (Section 1204(b))

Section 1204(b) alters nationwide and general permitting structures that will expedite oil and gas pipelines, transmission lines, and other utility and infrastructure projects without meaningful review. Nationwide permits offer a shortcut to the U.S. Army Corps of Engineers' (Corps) standard permitting process under the Clean Water Act, where in many cases, projects covered by these permits may be constructed without any notification at all and without a full alternatives analysis. Section 1204(b) would require the Corps to maintain Nationwide Permit 12, 14, 43, 57, and 58, which relate to pipelines, stormwater facilities, road projects, transmission lines, and other linear utilities, and waive consultation under the Endangered Species Act and National Historic Preservation Act for any reissuance. Additionally, Section 1204(b) makes changes to the general permitting scheme by requiring the Corps limit their own evaluations and deem any discharge into less than two acres as a minimally adverse effect. Locking in this truncated permitting process will fast-track construction and could result in significant environmental harm, destruction of wildlife habitat, and the endangerment of drinking water sources from coast to coast. Fast-tracking these nationwide permits will consequently fast-track “data centers, artificial intelligence, and machine learning facilities” that take shelter under this permitting scheme at a time when a strong bipartisan opposition to that expansion is growing.²

Limiting Environmental Oversight and Review (Section 1203 & Section 1204(a))

Section 1204(a) of the Bipartisan American Affordability and Jobs Act would severely limit EPA's ability to exercise its rarely used authority to veto destructive projects that decimate wetlands despite approval by the Corps. Under 404(c), EPA may veto projects that it deems to have unacceptable adverse effects on water supplies, fisheries, wildlife, or recreational areas, a power it has only used 14 times in the history of the Clean Water Act. However, its use has been limited to the most damaging and environmentally consequential actions, such as blocking the disastrous Pebble Mine in Alaska that would have destroyed thousands of acres of wetlands and other waters and harmed dozens of miles of salmon streams at the headwaters of Bristol Bay. Under this proposal, issued permits would be immune from 404(c) review, even if new information surfaces afterward. EPA is also barred from acting preemptively until an application is deemed “complete,” which gives the EPA a very limited window to act in the public interest and removes a critical backstop necessary to protect our drinking water, fisheries, and communities.

¹ NRDC v. N.J. DEP, 26-1252 (3d Cir. 2026); New Jersey LCV Expresses ‘Extreme Disappointment’ Following Approval of NESE Pipeline License (May 5, 2026) <https://www.njlc.org/news/new-jersey-lcv-expresses-extreme-disappointment-following-approval-nese-pipeline-license>

² Reissuance and Modification of Nationwide Permit (Jan. 8, 2026) <https://www.federalregister.gov/documents/2026/01/08/2026-00121/reissuance-and-modification-of-nationwide-permits>

Section 1203 would extend National Pollutant Discharge Elimination System (NPDES) permits from five to 10 years, doubling the term for a program designed to control direct discharges of pollution into rivers, lakes, streams and other waterbodies. Section 402 of the Clean Water Act requires that all NPDES permits renew on five-year intervals to ensure that industrial polluters update pollution controls to reflect the best available technology, new water quality standards, and emerging toxic threats like PFAS. Doubling the permit terms could lock in outdated discharge limits for decades at a time, limit public participation, and drastically reduce accountability for polluters taking shelter under outdated permits.

Eroding Judicial Review (Section 1205)

Section 1205 restricts access to justice by establishing abbreviated windows for challenging regulatory determinations under the Clean Water Act. The brief 150-day timeline set forth under Section 1205 applies not only to individual permits, but general permits, nationwide permits, and even actions where a state assumes dredge and fill permitting authority under Section 404. A state may undergo the years-long process of assuming permitting authority under the Clean Water Act while any individual must act within the brief 150-day window to challenge any deficiencies. The assumption process deserves meaningful scrutiny, as demonstrated by courts vacating Florida's Section 404 authority after finding it failed to meet the requirements of the Endangered Species Act.³

The Clean Water Act is our most important law protecting water for drinking, recreation and wildlife. It is overwhelmingly supported by the American public who want to see it strengthened and enforced to protect the economy, which is directly dependent on the supply of clean, safe water resources, and to make drinking water more affordable. At a time when the fundamental premise of this law – to restore and maintain the chemical, physical, and biological integrity of our nation's waters – is under attack, we strongly urge you to reject these provisions that undermine this bedrock legislation.

Sincerely,

350 Eugene
Alabama Rivers Alliance
Alameda Creek Alliance
Altamaha Riverkeeper, Inc.
Amigos Bravos
Atchafalaya Basinkeeper
Bayou City Waterkeeper
Bitterroot River Protection Association
Black-Sampit Riverkeeper
Blue Water Baltimore
California Coastkeeper Alliance
Californians for Western Wilderness
CalWild
Cape Fear River Watch
Cascade Forest Conservancy
Center for Biological Diversity

³ Center for Biological Diversity v. Zeldin, No. 24-5101 (D.C. Cir. March 27, 2026)

Center for Biological Diversity Action
Chesapeake Bay Foundation
Chesapeake Legal Alliance
Choctawhatchee Riverkeeper
Clean Water Action
Climate Justice Alliance
Columbia Riverkeeper
Columbia Riverkeeper
Conservancy of Southwest Florida
Cook Inletkeeper
Coosa River Basin Initiative/Upper Coosa Riverkeeper
CURE
Dayenu: A Jewish Call to Climate Action
Detroit Riverkeeper
Eagle River Coalition
Earth Ethics, Inc.
ECS
Environmental Integrity Project
Environmental Law and Policy Center
Environmental Protection Information Center (EPIC)
Environmental Working Group
Flow Water Advocates
Food & Water Watch
Forest Keeper
FOUR PAWS USA
Friends of Big Ivy
Friends of Blackwater, Inc.
Friends of the Earth
Friends of the Earth Action
Friends of the Everglades
Friends of the Kaw
GreenLatinos
Healthy Gulf
Hoosier Environmental Council
Humboldt Waterkeeper
I Heart Pisgah
Inland Empire Waterkeeper
International Marine Mammal Project of Earth Island Institute
Izaak Walton League Rapid City SD Chapter
John Muir Project
Kissimmee Waterkeeper
Klamath-Siskiyou Wildlands Center
Latino Farmers & Ranchers International, Inc.
Los Angeles Waterkeeper
Lower Susquehanna Riverkeeper Association
Matanzas Riverkeeper

Milwaukee Riverkeeper
Minnesota Center for Environmental Advocacy
MountainTrue
New Energy Economy
New Mexico Climate Justice
New Mexico Interfaith Power and Light
Next 100 Coalition
Northeastern Minnesotans for Wilderness
Northwest Environmental Advocates
NY/NJ Baykeeper
NYS Ornithological Society
Ohio River Foundation
Oil Change International
One Mississippi
Orange County Coastkeeper
Oregon Natural Desert Association
Oregon Wild
Orleans Audubon Society
Passionist Solidarity Network
Patuxent Riverkeeper
Pearl Riverkeeper
Peconic Baykeeper
Penobscot Bay Waterkeeper
Puget Soundkeeper Alliance
Raritan Riverkeeper
Resource Renewal Institute
Riverkeeper, Inc.
Russian Riverkeeper
San Diego Coastkeeper
San Juan Citizens Alliance
Satilla Riverkeeper
Severn Riverkeeper
Socially Responsible Agriculture Project
South Yuba River Citizens League
Spokane Riverkeeper
Spring Creek Coalition
St. Marys Riverkeeper
Suncoast Waterkeeper
Surfrider Foundation
Tennessee Riverkeeper
The Conservation Agency
The Cougar Fund
The Last Plastic Straw
The Water Collaborative
Three Rivers Waterkeeper
Tualatin Riverkeepers

Turtle Island Restoration Network
Upper Missouri Waterkeeper
Voters For Animal Rights
Watauga Riverkeeper
Waterkeeper Alliance
Waterkeepers Chesapeake
West Virginia Rivers Coalition
Western Environmental Law Center
Western Watersheds Project
Wildlife for All
Winter Wildlands Alliance
Winyah Rivers Alliance
Wyoming Wildlife Advocates
Yaak Valley Forest Council