

**Testimony of Maia Bellon**  
**Director, Washington State Department of Ecology**  
**House Committee on Transportation & Infrastructure**  
**Subcommittee on Water Resources and Environment**  
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Thank you Chair Napolitano, Ranking Member Westerman, and members of the Committee.

My name is Maia Bellon. I am the Director of the Washington State Department of Ecology, and I have been proud to serve in this role for the last 7 years. It is an honor to be here today.

Unfortunately, I am here to speak about a deeply troubling set of circumstances that should alarm Democrats and Republicans alike — the harmful actions being taken by the Environmental Protection Agency (EPA) under President Trump, which amount to nothing less than an attempt at fundamentally restructuring the Clean Water Act.

This is something only Congress has the authority to do.

I am gravely concerned by the ways this Administration's reckless changes will impact families and communities in Washington state and across the country who currently enjoy clean water for drinking, swimming, and fishing — not to mention the economic injury it threatens to our water-based industries, including recreation and tourism. Their actions also ignore federal obligations to Washington's 29 federally recognized Native American tribes, as well as tribal nations across the country.

On behalf of the more than 7.5 million people I serve every day, I am here to implore you as Members of Congress to continue conducting this much-needed oversight, and to reassert your authority over an Administration that is ignoring the rule of law and imperiling the health of our waters. Americans are depending on you.

**The Clean Water Act Enjoys Nearly a Half-Century of Bipartisan Support**

Almost 50 years ago, the people of Washington state recognized the importance of protecting our abundant natural resources by establishing my state agency, the Department of Ecology —the first government agency in the country focused on environmental protection, predating even the EPA.

Two years later, a bipartisan Congress took similar action, updating and strengthening federal laws on water pollution in America and formally enacting what is now known as the Clean Water Act. Under the new law, Washington became the first state in the nation to receive federal Clean Water Act delegation. As the first state that received delegation from the federal government, Washington has a long and proud history of effectively implementing federal law to protect our numerous water bodies, including the Puget Sound—the nation's largest estuary—the Columbia River, hundreds of lakes, and thousands of miles of rivers and streams.

In the nearly half-century since its enactment, the Clean Water Act has enjoyed ongoing bipartisan support in Congress and has served as an essential framework for every U.S. state and territory to keep our waters clean and our communities safe — regardless of each state’s political party, and regardless of how much or how little water we have.

I am here today as the director of a state environmental regulatory agency to confirm that we have been proud and faithful stewards of the responsibilities bestowed upon us by Congress.

Unfortunately, I am also here to report that the Trump Administration is breaking with decades of precedent set by Republican and Democratic administrations that came before it, by knowingly and willfully refusing to execute the law as Congress intended.

### **EPA’s Assault on the Clean Water Act Violates States’ Rights and Congressional Intent**

This EPA has launched a series of attacks on multiple fronts to undermine state authority, ignore congressional intent, and undercut the guarantee of clean water for all Americans.

What we are witnessing is a deregulatory campaign aimed at systematically dismantling the Clean Water Act as we know it.

Today I want to highlight two such attacks that affect all states and territories, as well as a targeted attack on clean water in Washington state specifically. These systematic attacks illustrate the unprecedented level of overreach and disregard this EPA has for states’ rights and our delegated role under the Clean Water Act, granted to us by Congress.

The first of these attacks is the Trump Administration’s attempt to rewrite the rules established by Congress for states and tribes under Section 401 of the Clean Water Act.

Congress enacted Section 401 to give states the direct authority to grant, condition, or deny water quality certifications for federally permitted activities within our state borders. In doing so, Congress empowered states to be co-regulators with the federal government, and charged us with ensuring federally permitted activities are not inconsistent with, or in violation of, water quality requirements.

In April, President Trump signed an executive order directing EPA to completely rewrite the playbook for states under Section 401. The White House is not shy about the purpose of this directive — they admit plainly it is intended to help private industry get more energy projects approved without “interference” from states like Washington.

Last month, EPA followed through by formally proposing changes to the implementation of Section 401. If finalized, their proposed rule would:

- ) dramatically narrow the scope of federally permitted projects that states have the authority to certify within our borders;

- ) severely restrict the amount of time states have to certify or condition a federally permitted project; and
- ) grant themselves ultimate veto authority over state decisions.

I cannot overstate how damaging EPA's proposed rule will be to states.

EPA's attempt to set an artificial timeline shorter than the one-year set by Congress could result in Ecology being forced to issue more denials or have its authority deemed waived. In short, it would make protecting water quality more difficult and result in more delays for projects.

EPA's rule represents a massive overreach by the administration that improperly constrains state authority, ignores both the spirit and the letter of the law, and reveals this Administration's contempt for the right of every state to protect our waters and our communities.

This is particularly concerning for Washington state where we are deeply reliant on clean water for drinking, recreation, commerce, and to fulfill tribal treaty obligations.

EPA's proposed rule cites my agency's denial of a water quality certification for the Millennium coal export terminal on the Columbia River as a basis for these drastic measures. For two years we have been falsely accused of "abusing our 401 authority" and denying the project based on our so-called philosophical opposition to coal. This is frankly nonsense.

The fact is that our decision was based on the project's failure to meet water quality standards, and its further failure to meet our state's environmental standards. The project proponent failed to provide any mitigation for the areas the project would devastate, especially along the Columbia River. The environmental analysis demonstrated that this project would have destroyed 24 acres of wetlands and 26 acres of forested habitat, as well as dredged 41 acres of river bed. It would have contaminated stormwater from stockpiling 1.5 million tons of material onsite near the river — picture, if you will, an 85-foot-high pile of coal running the length of the National Mall, from the steps of the Capitol to the foot of the Lincoln Memorial.

In short, there were many insolvable problems with the Millennium project — I have named only a few. I am confident in the work my agency has done to protect Washington from the Millennium project's irreparable harm. It was correctly and properly denied under our Section 401 authority, which is further demonstrated by the multiple court rulings that have upheld our decision.

The health of the Columbia River, and all of Washington's waters, is vital to our state's agriculture and manufacturing economies, central to our energy production, and relied upon by Washington's 29 federally recognized Native American tribes. It is also critical to maintaining the healthy environment that Washingtonians treasure.

Yet, this administration is set on crafting a false narrative about Washington state and making an example out of us to ensure that we, and states across the country, lose our ability to protect our waters.

The fact is that states have been conducting this process for nearly half a century without issue. That is why no other administration has threatened to erode state authority, put clean water at risk, and hand over the keys to polluters in such a radical way.

This EPA chose to forge ahead on issuing this rule despite bipartisan outcry from governors, and despite failing to engage in meaningful consultation. On January 31, 2019, the Western Governors Association sent a letter to President Trump stating, “We urge you to direct federal agencies to reject any changes to agency rules, guidance, or policy that may diminish, impair, or subordinate states’ well-established sovereign and statutory authorities to protect water quality within their boundaries.”

Unfortunately, this plea from governors was ignored, and EPA’s rule recklessly erodes state authority. It not only contravenes the law and the will of the states, but fails to acknowledge the vast differences and needs among states. It is unacceptable and dangerous, and states will not stop fighting to block it.

Another example of the Trump Administration’s systematic assault on the Clean Water Act is the rule change underway to repeal and replace the definition for which bodies of water qualify as a Water of the United States and therefore protection under federal law.

In 2015, EPA completed a long-overdue rulemaking process that finally established a clear and scientifically defensible definition of Waters of the United States that must be protected under the Clean Water Act. The 2015 rule cleared up ambiguities from 1980s-era regulations that made it more difficult for states like Washington to control pollution in our waters. It was a welcome and necessary step after years of litigation that resulted in two seemingly different Supreme Court decisions, leaving the definition unclear and much more difficult to enforce.

But now, President Trump’s EPA has once again thrown the law into chaos by taking the harmful step of repealing the 2015 rule and proposing to replace it with a rule that will leave vast portions of our nation’s waters unprotected and that conflicts with Supreme Court rulings. In one of Washington’s counties alone, it will result in loss of Clean Water Act protection for over 50 percent of streams and wetlands. This ill-advised rule results in the exact opposite of regulatory certainty.

Trump’s EPA has left Washington and many other states struggling for ways to protect waters that we have historically regulated and protected. The Administration’s decision to disregard the concept of “significant nexus” for determining which waters are Waters of the United States flies in the face of science and common sense. Waters such as ephemeral streams and adjacent wetlands, which have a significant nexus to a traditionally navigable water, should be Waters of the United States.

Like many other actions taken by EPA over the last two years, this one appears to be rooted in political gamesmanship rather than responsible governance.

### **Targeted Attacks on Clean Water in Washington State**

While many of EPA's efforts are aimed at undermining Americans' access to clean water across the country, this Administration has also launched a number of attacks that are aimed directly at clean water in Washington state.

This is perhaps most evident in their repeal of the Water Quality Standards for Human Health Criteria— also known as our “fish consumption rule.” This rule only applies to our state and it deals with how we protect the health of Washingtonians that consume fish such as salmon and trout from our marine and fresh waters.

Washington's fish consumption rule was finalized under the Clean Water Act in 2016 after extensive public processes that included the voices of communities, tribes, local governments, and businesses.

Yet in May, this EPA took the counterproductive and punitive step of repealing our rule, creating an atmosphere of regulatory and legal uncertainty that benefits no one.

As we have come to expect from this administration, they acted against the repeated objections of our state and those of Washington's tribes — and without a legal basis for the reconsideration of our standards. Under the Clean Water Act, there are only two circumstances under which EPA can propose new water quality standards for a state, and neither circumstance currently exists in Washington.

We have already filed a lawsuit to stop EPA's overreach because what they are doing is clearly illegal under the Clean Water Act, is creating chaos, and opens up our businesses and local governments to third party lawsuits.

Congress should be equally outraged by EPA's willful disregard for the law.

### **Congress Must Uphold the Clean Water Act**

Taken individually, each of EPA's actions threatens clean water and states' congressionally delegated authority to safeguard our natural resources and our communities.

Taken together, it is clear that the Clean Water Act is now under direct and sustained attack, and this EPA will stop at nothing to please polluters — including overturning protections that have safeguarded our waters for decades.

While states are being tossed aside and ignored, Congress has the constitutional authority as an equal branch of government to assert itself and provide critical oversight of an unchecked executive branch.

When it enacted the Clean Water Act, Congress clearly intended for the federal government to administer the law in coordination with states, with both levels of government working in tandem to ensure the law's effective implementation and the protection of our nation's waters.

This EPA's sweeping actions are a violation of that intent, and an insult to the concept of "cooperative federalism."

Rather than treating states as co-regulators, EPA is focused on undermining the right and obligation of every state to safeguard our waters and our residents from environmental harm.

Americans deserve better. We all deserve clean water.

In Washington state, and other states across the country, we take our role to protect water seriously. But we need your help.

We are encouraged that this committee is standing up and taking notice that EPA is no longer faithfully executing the law or implementing the Clean Water Act as intended. Washington state fully supports this much needed oversight to reign in this Administration's outrageous actions.

Together, we can restore the promise of clean water for every American, in every state and territory.

Thank you, and I look forward to answering your questions.