

Testimony of CJ Stewart of
the National Tribal Energy Association

Senate Committee on Environment and Public Works
*"Hearing to Examine Implementation of Clean Water Act Section 401 and S. 3303,
the Water Quality Certification Improvement Act of 2018"*

August 16, 2018

CJ Stewart's 401 Testimony

Thank you Chairman Barrasso, Ranking Member Carper, and Members of the Environment and Public Works Committee. I appreciate the invitation and the opportunity to testify before this Committee on examining implementation of Clean Water Act (CWA) 401 and your accompanying legislation.

My name is CJ Stewart, and I am a Crow Tribal member and a Board Member and Co-Founder of the National Tribal Energy Association, or NTEA. NTEA advocates for both tribes and industry to promote healthy and sustainable energy economies on Native American lands. I am also currently in private practice as an energy consultant for Indian energy development and infrastructure.

I previously served two terms as a Senator for the Crow Legislative Branch and as Chairman of the Crow Natural Resource & Infrastructure Development Committees from 2007-2015. In 2016, at the request of Chairman Darrin Old Coyote, 21st Chairman of the Crow Nation, I held the position of Crow Nation Energy Advisor and Legislative Liaison. During this time, I was also appointed as Vice Chairman of Congressman Ryan Zinke's Natural Resource Advisory Committee.

Lastly, I worked for 10 years as a union coal miner hauling Crow coal and was the first Native American to be appointed to serve on the Montana Coal Board, where I was voted Vice Chairman.

Tribal economies face many obstacles to success, and currently the economy of the Crow Tribe is facing a critical crisis. While we are blessed with untold mineral wealth in oil, coal, and gas on the Crow reservation, regulatory roadblocks and political crises force us to languish in poverty. The tribe currently has an unemployment rate of 70% or more, and

hopelessness is beginning to cast a shadow where there was once hope for a vibrant and prosperous future.

Imagine having a trillion dollars in mineral wealth under your feet and yet your people are starving and destitute before you. It's a cruel nightmare that could be avoided if not for the Clean Water Act being weaponized against the Crow Tribal resource economy and the Crow people and culture.

Clean Water Act Section 401 was intended to provide states with a way to apply key water quality protections to federally permitted activities. However, certain states have misused the process to block Crow economic projects for political reasons that have nothing to do with water quality. These states have hijacked the 401 certification process and used it as a means to interfere with tribal and international trade policy in violation of the Commerce Clause of the U.S. Constitution, including and specifically the Indian Commerce Clause.

The economic prosperity of tribal communities throughout the country is dependent on the flow of goods to port facilities that is unencumbered by physical, commercial, or political roadblocks. Surely the founding fathers saw the necessity of the Indian Commerce Clause for tribal nations against hostile and racist actors be they private or public who bore animosity against native peoples. Importantly, these laws were put in place to protect sovereign tribal economic activity, but recent and ongoing activity on the part of certain coastal states severely infringes on the rights of states and tribes without direct access to export facilities to engage in interstate commerce.

The Crow Nation is deeply respectful of the need for states and tribes to be able to protect their own waters from projects that would degrade water quality and infringe upon water use. We are also needing of the same respect in terms of our commercial endeavors including our sovereign resource development and commercialization. Unlike these aforementioned hostile actors who are so detrimental to the quality of life for the Crow people, we seek no power over or ill will toward them. We instead seek a legislative remedy that maintains equal and fair application of the law.

The Water Quality Certification Improvement Act of 2018 is such a legislative remedy and does not inhibit the ability of states and tribes to enforce their water quality laws. Rather, it provides necessary transparency and clarity to the 401 process, while preserving the central role of tribes and states in protecting local waterways.

The U.S. holds more of the world's coal reserves than any other country, and the coal mined by the Crow Nation is preferred by high efficiency, low emission power plants that are in operation and being built around the world. However, even though our coal resources provide a critical component of U.S. export trade, our ability to get our coal to fast-growing Asian markets is being hindered by states on the West Coast who continue to refuse to grant needed approvals to build state of the art export facilities for political – not water quality – reasons.

The Water Quality Certification Improvement Act of 2018 ensures that water quality certifications focus on their intended environmental purpose – the protection of local waterbodies potentially impacted by federally licensed activities. It will therefore protect the health of local communities while simultaneously promoting the ability of tribes and landlocked states to exercise their right to engage in interstate commerce and grow the economy.