



November 2, 2020

US EPA, Region 4 Water Division, OWSPB  
c/o Kelly Laycock  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303

Via Email to: 404Assumption-FL@epa.gov

**RE: Addendum to Comments in Opposition to FDEP's Assumption Application Package:  
Docket No. EPA-HQ-OW-2018-0640, FRL-10014-54-Region 4**

Dear Mr. Laycock,

In addition to the comments submitted by Waterkeepers Florida on behalf of organizations across the state in opposition to Florida Department of Environmental Protection's ("FDEP") application to assume jurisdiction under Section 404(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1344, for wetland permitting in waters of the United States, Waterkeepers Florida submits this addendum for the record.

Waterkeepers Florida is a regional entity composed of all 14 Waterkeeper organizations working in the State of Florida to protect and restore our water resources across over 45,000 square miles of watershed which is home to over 15 million Floridians. Waterkeeper organizations have been working in their individual capacities in the state of Florida for over 20 years to protect and restore Florida's water resources.

**Retained Waters List**

Despite the inadequacy of the retained waters list and map provided in FDEP's application, Waterkeepers Florida conducted a cursory review of some of the waters which would not be retained under Army Corps jurisdiction if this new regulatory regime were to move forward. This review revealed that many of our waterways and wetlands would lose critical federal oversight. The table below includes waterways that we are formally requesting be included in the list of waters retained under the Army Corps of Engineers' Section 404 permitting authority should this application package move forward.

<b>Waterbody Name</b>	<b>County</b>
SANTA FE RIVER	Alachua
LAKE SANTA FE	Alachua
TURKEY CREEK -- MACCLENNY	Baker
CEDAR CREEK	Baker
SOUTH PRONG ST. MARYS RIVER	Baker
NORTH PRONG ST. MARYS RIVER	Baker

ALLIGATOR CREEK	Bradford
SANTA FE RIVER	Bradford
NEW RIVER	Bradford
MARGATE LAKES	Broward
PLAYLAND ISLES LAKES	Broward
LAKE MELVA	Broward
C-11 (EAST)	Broward
C-42 (WEST HOLLYWOOD CANAL)	Broward
C-12	Broward
HOLLOWAY CANAL (EAST)	Broward
SOUTH NEW RIVER CANAL (C-11)	Broward
NORTH NEW RIVER CANAL (WEST)	Broward
L-35A BORROW	Broward
C-14 (CYPRESS CREEK CANAL/POMPANO CANAL)	Broward
POMPANO CANAL	Broward
HALLANDALE BEACH BOULEVARD	Broward
HARRISON STREET	Broward
MINNESOTA STREET	Broward
BAHIA MAR	Broward
SABASTIAN STREET	Broward
DANIA BEACH	Broward
CUSTER STREET BEACH	Broward
BIRCH STATE PARK	Broward
OAKLAND PARK BOULEVARD	Broward
COMMERCIAL BOULEVARD PIER	Broward
POMPANO BEACH PIER	Broward
ATLANTIC OCEAN (BROWARD COUNTY; PORT EVERGLADES)	Broward
ATLANTIC OCEAN (BROWARD COUNTY)	Broward
ICWW (BROWARD COUNTY NORTHERN SEGMENT)	Broward
ICWW (BROWARD COUNTY CENTRAL SEGMENT)	Broward
ICWW (BROWARD COUNTY SOUTHERN SEGMENT)	Broward
LAS OLAS ISLES FINGER CANAL SYSTEM	Broward
WITHLACOOCHEE (SOUTH) RIVER	Citrus

NORTH FORK BLACK CREEK	Clay
SUWANNEE RIVER	Columbia
SANTA FE RIVER	Columbia
ICHETUCKNEE RIVER	Columbia
DEEP CREEK	Columbia
ROBINSON CREEK	Columbia
SHINGLE CREEK	Dixie
TURKEY CREEK	Dixie
SUWANNEE RIVER	Dixie
SEATON CREEK	Duval
EDWARDS CREEK	Duval
GREENFIELD CREEK	Duval
MINK CREEK	Duval
C-10 (HOLLYWOOD CANAL)	Broward
PRINGLE BRANCH	Flagler
BIG CYPRESS SWAMP	Flagler
HULETT SWAMP	Flagler
GRAHAM SWAMP	Flagler
SPECKLED PERCH LAKE	Flagler
NEOGA LAKE	Flagler
BLACK LAKE	Flagler
TANK LAKE	Flagler
BLACK BRANCH	Flagler
SWEETWATER SWAMP	Flagler
MIDDLE HAW CREEK	Flagler
LAKE DISSTON	Flagler
OCHLOCKONEE RIVER	Franklin
OCHLOCKONEE RIVER	Gadsden
TELOGIA CREEK	Gadsden
LITTLE RIVER (OCHLOCKONEE RIVER)	Gadsden
LAKE TALQUIN	Gadsden
SUWANNEE RIVER	Gilchrist
SANTA FE RIVER	Gilchrist

CAMP BRANCH	Hamilton
SUWANNEE RIVER	Hamilton
WITHLACOOCHEE (NORTH) RIVER	Hamilton
ALAPAHA RIVER	Hamilton
ALAPAHOOCHEE RIVER	Hamilton
WITHLACOOCHEE (SOUTH) RIVER	Hernando
LITTLE WITHLACOOCHEE RIVER	Hernando
FOURMILE CREEK	Lafayette
SUWANNEE RIVER	Lafayette
ESTERO BAY OFW TRIBUTARIES (MULLOCK CREEK, SPRING CREEK, HENDRY CREEK, OAK CREEK, LEITNER CREEK)	Lee County
CALOOSAHATCHEE TRIBUTARIES (TELEGRAPH CREEK, HICKEY CREEK, YELLOW FEVER CREEK, POWELL CREEK, WHISKEY CREEK)	Lee County
OCHLOCKONEE RIVER	Leon
LAKE TALQUIN	Leon
BULL CREEK	Levy
SUWANNEE RIVER	Levy
WITHLACOOCHEE (SOUTH RIVER)	Levy
OCHLOCKONEE RIVER	Liberty
TELOGIA CREEK	Liberty
SUWANNEE RIVER	Madison
WITHLACOOCHEE (NORTH) RIVER	Madison
MANATEE RIVER	Manatee
WARES CREEK	Manatee
BRADEN RIVER	Manatee
CEDAR HAMMOCK CREEK	Manatee
CENTER LAKE	Manatee
GAP CREEK	Manatee
PALM LAKE	Manatee
BEACON LAKE	Manatee
CYPRESS STRAND	Manatee
GLENN CREEK	Manatee
NONSENSE CREEK	Manatee

PLEASANT LAKE	Manatee
SUGARHOUSE CREEK	Manatee
WARK LAKE	Manatee
WILLIAMS CREEK	Manatee
JUNIPER SPRINGS RUN	Marion
RAINBOW RIVER	Marion
WITHLACOOCHEE (SOUTH) RIVER	Marion
VIRGINIA BEACH	Miami-Dade
HOBIE BEACH	Miami-Dade
KEY BISCAIYNE BEACH	Miami-Dade
JOHN LLOYD PARK	Miami-Dade
CRANDON PARK NORTH	Miami-Dade
COLLINS PARK - 21ST STREET	Miami-Dade
SUNNY ISLES BEACH - PIER PARK	Miami-Dade
GOLDEN BEACH	Miami-Dade
BILL BAGGS CAPE FLORIDA STATE PARK	Miami-Dade
OLETA STATE PARK	Miami-Dade
CRANDON PARK SOUTH	Miami-Dade
SOUTH BEACH PARK (DADE COUNTY)	Miami-Dade
53RD STREET - MIAMI BEACH	Miami-Dade
NORTH SHORE OCEAN TERRACE	Miami-Dade
SURFSIDE BEACH - 93RD STREET	Miami-Dade

HAULOVER BEACH	Miami-Dade
HAULOVER BEACH - NORTH	Miami-Dade
SUNNY ISLES BEACH - SAMPSON PARK	Miami-Dade
MATHESON HAMMOCK	Miami-Dade
ATLANTIC OCEAN (MIAMI-DADE COUNTY; ELLIOT KEY)	Miami-Dade
ATLANTIC OCEAN (MIAMI-DADE COUNTY; BISCAYNE BAY)	Miami-Dade
ATLANTIC OCEAN (MIAMI-DADE COUNTY; NORTH DADE INLET)	Miami-Dade
ATLANTIC OCEAN (MIAMI-DADE COUNTY; BISCAYNE BAY)	Miami-Dade
ATLANTIC OCEAN (MIAMI-DADE COUNTY; PORT OF MIAMI)	Miami-Dade
CARD SOUND	Miami-Dade
BISCAYNE BAY	Miami-Dade
ARCH CREEK (LOWER SEGMENT)	Miami-Dade
WEST LAKE	Miami-Dade
ICWW (MIAMI-DADE COUNTY NORTHERN SEGMENT)	Miami-Dade
KEY BISCAYNE	Miami-Dade
ICWW (MIAMI-DADE COUNTY)	Miami-Dade
HAULOVER INLET/ARCH CREEK	Miami-Dade
PORT OF MIAMI	Miami-Dade
DIRECT RUNOFF TO BAY	Miami-Dade

DIRECT RUNOFF TO BAY	Miami-Dade
WAGNER CREEK	Miami-Dade
DIRECT RUNOFF TO BAY	Miami-Dade
CORAL GABLES CANAL (EAST)	Miami-Dade
C2/SNAPPER CREEK (EAST)	Miami-Dade
ARCH CREEK (UPPER SEGMENT)	Miami-Dade
HOMESTEAD AIRPORT OUTFALL	Miami-Dade
MOWRY CANAL OUTFALL	Miami-Dade
DIRECT RUNOFF TO BAY	Miami-Dade
BLACK CREEK	Miami-Dade
C-111 (COASTAL)	Miami-Dade
ROUTE 1 KEY A	Miami-Dade
TAYLOR SLOUGH	Miami-Dade
SKY LAKE	Miami-Dade
HIGHLANDS LAKE	Miami-Dade
HAMMOCK LAKE (EAST)	Miami-Dade
HAMMOCK LAKE (WEST)	Miami-Dade
DESOTO LAKE	Miami-Dade
SNAKE CREEK CANAL (NORTH FORK)	Miami-Dade

SNAKE CREEK CANAL (WEST)	Miami-Dade
C-4/TAMIAMI CANAL	Miami-Dade
C-2/SNAPPER CREEK	Miami-Dade
C-6/MIAMI CANAL (WEST)	Miami-Dade
C-5/COMFORT CANAL	Miami-Dade
C-8/BISCAYNE CANAL	Miami-Dade
SNAKE CREEK CANAL (EAST)	Miami-Dade
GOULDS CANAL	Miami-Dade
C-111 (SOUTH)	Miami-Dade
C-102	Miami-Dade
MILITARY CANAL	Miami-Dade
NORTH CANAL	Miami-Dade
C-4/TAMIAMI CANAL (WEST)	Miami-Dade
C-100	Miami-Dade
MODEL LAND CANAL	Miami-Dade
C-1 (BLACK CREEK)	Miami-Dade
C-111	Miami-Dade
C-103 (MOWRY CANAL)	Miami-Dade
C-113	Miami-Dade



FLORIDA CITY CANAL	Miami-Dade
REST BEACH (KEY WEST)	Monroe
KENNEDY DRIVE AND NORTH ROOSEVELT BOULEVARD (KEY WEST)	Monroe
NORTH ROOSEVELT BOULEVARD/COW KEY (KEY WEST)	Monroe
FORT ZACHARY TAYLOR STATE PARK	Monroe
SOUTH BEACH (KEY WEST)	Monroe
SIMONTON STREET BEACH (KEY WEST)	Monroe
SMATHERS BEACH	Monroe
HIGGS BEACH	Monroe
BAHIA HONDA OCEANSIDE	Monroe
BAHIA HONDA BAYSIDE	Monroe
BAHIA HONDA SANDSPUR	Monroe
COCO PLUM BEACH	Monroe
SOMBRERO BEACH	Monroe
CURRY HAMMOCK STATE PARK	Monroe
VETERAN'S BEACH	Monroe
JOHN PENNEKAMP STATE PARK	Monroe
ANNE'S BEACH	Monroe
SEA OATS BEACH	Monroe
ISLAMORADA LIBRARY BEACH	Monroe
FOUNDERS PARK	Monroe
HARRY HARRIS COUNTY PARK	Monroe
ATLANTIC OCEAN (MONROE COUNTY; KEY LARGO NORTH)	Monroe
GULF OF MEXICO (MONROE COUNTY; BAHIA HONDA-CUDJOE KEY)	Monroe
SADDLEBUNCH KEYS	Monroe
SUGARLOAF	Monroe
CUDJOE KEY	Monroe
GULF OF MEXICO (MONROE COUNTY; KEY WEST-CUDJOE KEY)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; CUDJOE KEY-KEY WEST)	Monroe
KEY WEST AND OUTLYING ISLANDS	Monroe
ATLANTIC OCEAN (MONROE COUNTY; BAHIA HONDA-CUDJOE KEY)	Monroe
DRY TORTUGAS	Monroe

BIG PINE KEY	Monroe
NO NAME KEY	Monroe
LONG BEACH	Monroe
BIG TORCH KEY	Monroe
LITTLE KNOCKEMDOWN KEY	Monroe
KEY WEST	Monroe
STOCK ISLAND	Monroe
US NAVAL AIR STATION KEY WEST	Monroe
BAHIA HONDA STATE PARK	Monroe
GRASSY KEY	Monroe
GULF OF MEXICO (MONROE COUNTY; MARATHON)	Monroe
FLORIDA BAY (MIDDLE KEYS)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; MARATHON)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; MARATHON)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; LONG KEY)	Monroe
LONG KEY	Monroe
VACA KEY	Monroe
KEY COLONY	Monroe
FLORIDA BAY (EVERGLADES NATIONAL PARK; FLAMINGO)	Monroe
DUCK KEY	Monroe
SOUTH KEY LARGO	Monroe
MIDDLE KEY LARGO	Monroe
ATLANTIC OCEAN (MONROE COUNTY; ISLAMORADA)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; KEY LARGO)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; ISLAMORADA)	Monroe
NORTH KEY LARGO	Monroe
PLANTATION KEY	Monroe
FLORIDA BAY (UPPER KEYS)	Monroe
ATLANTIC OCEAN (MONROE COUNTY; KEY LARGO-TAVERNIER)	Monroe
UPPER MATECUMBE KEY	Monroe
LOWER MATECUMBE KEY	Monroe
GULF OF MEXICO (EVERGLADES NATIONAL PARK; CAPE SABLE)	Monroe
GULF OF MEXICO (EVERGLADES NATIONAL PARK)	Monroe

GULF OF MEXICO (EVERGLADES NATIONAL PARK)	Monroe
GULF OF MEXICO (EVERGLADES NATIONAL PARK; CAPE SABLE)	Monroe
GULF OF MEXICO (EVERGLADES NATIONAL PARK)	Monroe
LONG SOUND	Monroe
BLACKWATER SOUND	Monroe
BARNES SOUND	Monroe
MANATEE BAY	Monroe
LITTLE BLACKWATER SOUND	Monroe
PUMPKIN KEY	Monroe
MOCCASIN BRANCH	St Johns
CABBAGE CREEK	Nassau
PIGEON CREEK	Nassau
BRUSH CREEK	Nassau
DEEP CREEK	Nassau
DUNN CREEK, LITTLE DUNN CREEK	Nassau
ALLIGATOR CREEK	Nassau
LITTLE MILLS CREEK	Nassau
CUSHING CREEK	Nassau
NASSAU RIVER	Nassau
WITHLACOOCHEE (SOUTH RIVER)	Pasco
HILLSBOROUGH RIVER	Pasco
HILLSBOROUGH RIVER	Polk
TRESTLE BAY SWAMP	St Johns
FISH SWAMP	St Johns
MILL CREEK	St Johns
SIXMILE CREEK	St Johns
TWELVEMILE SWAMP	St Johns
ST. MARKS POND SWAMP	St Johns
DRY SWAMP	St Johns
CABBAGE SWAMP	St Johns
DEEP CREEK	St Johns
ST MARY'S RIVER	St. Mary
WITHLACOOCHEE (SOUTH) RIVER	Sumter

LITTLE WITHLACOOCHEE RIVER	Sumter
ROCKY CREEK	Suwannee
SUWANNEE RIVER	Suwannee
NEW RIVER	Union
OCHLOCKONEE RIVER	Wakulla
EAST RIVER	Wakulla

Furthermore, attached please find comments previously submitted to FDEP in opposition of this effort incorporated herein by reference.

Waterkeepers Florida urges you to deny FDEP's application package for assumption of Clean Water Act Section 404 authority in order to ensure that our water resources retain the critical federal protections and oversight that our wetlands and vulnerable water resources so desperately need.

Sincerely,  
**Kelly Cox, Esq.**  
 General Counsel, Miami Waterkeeper  
 On behalf of Waterkeepers Florida



Florida Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, FL 32399

Attn: Jessica Melkun  
Via Email: [Jessica.Melkun@dep.state.fl.us](mailto:Jessica.Melkun@dep.state.fl.us)

July 2, 2018

RE: FDEP Rule Development Regarding Proposal to Assume 404 Jurisdiction

Dear Secretary Valenstein,

On behalf of our respective organizations and our thousands of members, we are writing to request that the Florida Department of Environmental Protection (FDEP) abandon rule development related to Clean Water Act (CWA) Section 404(a) assumption of jurisdiction from the federal government for wetland permitting. Each signatory below is an independent organization and member of Waterkeeper Alliance, a global movement of on-the-water advocates who patrol and protect over 100,000 miles of rivers, streams, and coastlines. More than 300 Waterkeeper Organizations worldwide combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law.

Florida's waterways are uniquely connected and are critical to our public health, our economy, and our environment. In light of our rapidly growing population and increasing development pressure, it is essential that these waters are afforded the utmost oversight and protection to ensure that the resources on which we depend are adequately protected. CWA Section 404 requires permits for the discharge of dredge and fill material into Waters of the United States, including wetlands. Florida has particularly fragile and critical areas that are regulated by Section 404 dredge and fill permits, and which require the highest level of review and scrutiny. Currently, federal Section 404 permits and state Environmental Resource Permits overlap in that both must be obtained for impacts above regulatory thresholds in federal waters. The additional oversight provided by the federal government based on their historic jurisdiction and agency expertise in

this area is critical to adequately protecting our waterways. The federal authority to govern our waters has its origins in the Commerce Clause of the Constitution due to the central role that our waterways play in interstate commerce. Traditionally, wetlands have been subject to federal jurisdiction as well due to their critical role in providing watershed connectivity. As such, CWA authority should remain with the federal government. Any delegation to the state would be inappropriate and incongruous with the spirit of the law. Our organizations vehemently oppose the state of Florida's attempt to assume this authority.

Furthermore, assumption of this process by FDEP would eliminate the additional scrutiny of federal laws that apply to federal permits actions. For example, Section 7 of the Endangered Species Act mandates direct consultation with the United States Fish and Wildlife Service for any federal activity that may affect a federally listed species. Florida's waterbodies provide critical habitat to a variety of listed species. The survival of these species depends on diligent protection of the water on which they depend. Additionally, the National Environmental Policy Act (NEPA) requires federal agencies to prepare an extensive Environmental Impact Statement (EIS) for any major federal action significantly affecting the quality of the human environment. Currently, the issuance of a Section 404 permit by the Corps constitutes "federal action" under NEPA. Since no law that parallels NEPA exists at the state level, Section 404 permits issued by the state would no longer be subject to the rigorous review provided by an EIS.

Moreover, this delegation would add additional regulatory burden to FDEP, which is already under-resourced for its current responsibilities. For example, FDEP is woefully behind schedule on Total Maximum Daily Load development and is regularly behind in enforcement actions related to the National Pollutant Discharge Elimination System permit program. Additional responsibilities will divert resources away from these critical pre-existing duties. It is important to note that the Environmental Protection Agency (EPA) would not provide any federal funding to Florida for the administration of the 404 permitting program. Due to the value of these resources to our state, the large scope of this permitting program, and FDEP's already limited resources, FDEP's assumption of this responsibility would not guarantee the level of protection that our water requires.

There has been substantial public opposition to the state's proposed assumption of Section 404 authority. Despite this opposition, FDEP has continued to move forward, limiting the opportunity for public involvement in the rulemaking process and has failed to be transparent in rule development. Many questions from the public remain unanswered, including a clarification as to precisely which waters would remain under federal jurisdiction. Furthermore, given the current uncertainty regarding the very definition "Waters of the United States" under the Clean Water Rule, it is clear that FDEP's rule making on this matter is premature.

The Clean Water Act was developed, in part, because state governments were failing to manage waters in a manner that was protective of public and environmental health. Power to implement the Section 404 permit program was thus assumed by federal agencies. FDEP's attempt to take this authority undermines this purpose and puts Florida's water resources at stake.

In addition, we fully support comments submitted by Earthjustice regarding the state's proposal to administer its own permitting program under Section 404(a) of the Clean Water Act of 1972, 33 U.S.C. § 1344, in waters of the United States.

Sincerely,

Rachel Silverstein, Ph.D.  
Miami Waterkeeper

Lisa Rinaman  
St. Johns Riverkeeper

Jen Lomberg  
Matanzas Riverkeeper

Andrew Hayslip  
Tampa Bay Waterkeeper

Andy Mele & Justin Bloom  
Suncoast Waterkeeper

Reinaldo Diaz  
Lake Worth Waterkeeper

Laurie Murphy  
Emerald Coastkeeper

John Cassani  
Calusa Waterkeeper

Harrison Langley  
Collier County Waterkeeper

John Quarterman  
Suwanee Riverkeeper

Marty Baum  
Indian Riverkeeper

Georgia Ackerman  
Apalachicola Riverkeeper



March 11, 2020

Florida Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, FL 32399

Attn.: Heather Mason  
Via Email: [Heather.Mason@FloridaDEP.gov](mailto:Heather.Mason@FloridaDEP.gov)

**RE: Request for Hearing: Proposed Rules Related to State Assumption of the Clean Water Act Section 404 Program**

Ms. Mason,

On behalf of our respective organizations and our thousands of members, we are writing to express our concerns regard the Florida Department of Environmental Protection’s proposal to assume jurisdiction under Section 404(a) of the Clean Water Act, 33 U.S.C. § 1344, for wetland permitting in waters of the United States. Each signatory below is an independent organization, member of Waterkeepers Florida, and a member of Waterkeeper Alliance, a global movement of on-the-water advocates who patrol and protect over 100,000 miles of rivers, streams, and coastlines. More than 350 Waterkeeper Organizations worldwide combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law.

The concerns outlined below arise from proposed revisions to Chapter 62-330, the proposed promulgation of Chapter 62-331, the Draft 404 Handbook, and the Department’s Statement of Estimated Regulatory Costs (“SERC”) all of which were published on February 19, 2020.

Affected Interests

Florida’s waterways are uniquely connected and are critical to our public health, our economy, and our environment. In light of our rapidly growing population and increasing development pressure, it is essential that these waters are afforded the utmost oversight and protection to ensure that the resources on which we depend are adequately protected. CWA Section 404 requires permits for the discharge of dredge and fill material into Waters of the United States, including wetlands. Florida has particularly fragile and critical areas that are regulated by Section 404 dredge and fill permits, and which require the highest level of review and scrutiny.

Currently, federal Section 404 permits and state Environmental Resource Permits overlap in that both must be obtained for impacts above regulatory thresholds in federal waters. The additional oversight provided by the federal government based on their historic jurisdiction and agency



expertise in this area is critical to adequately protecting our waterways. The federal authority to govern our waters has its origins in the Commerce Clause of the Constitution due to the central role that our waterways play in interstate commerce. Traditionally, wetlands have been subject to federal jurisdiction as well due to their critical role in providing watershed connectivity. As such, CWA authority should remain with the federal government. Any delegation to the state would be inappropriate and incongruous with the spirit of the law. Our organizations vehemently oppose the state of Florida's attempt to assume this authority.

### State Assumption Issues

Furthermore, assumption of this process by FDEP would eliminate the additional scrutiny of federal laws that apply to federal permits actions. For example, Section 7 of the Endangered Species Act mandates direct consultation with the United States Fish and Wildlife Service for any federal activity that may affect a federally listed species. Florida's waterbodies provide critical habitat to a variety of listed species. The survival of these species depends on diligent protection of the water on which they depend. DEP's proposed rules, however, do not explain how compliance with the ESA will be achieved. Additionally, the National Environmental Policy Act (NEPA) requires federal agencies to prepare an extensive Environmental Impact Statement (EIS) for any major federal action significantly affecting the quality of the human environment. Currently, the issuance of a Section 404 permit by the Corps constitutes "federal action" under NEPA. Since no law that parallels NEPA exists at the state level, Section 404 permits issued by the state would no longer be subject to the rigorous review provided by an EIS.

Moreover, this delegation would add additional regulatory burden to FDEP, which is already under-resourced for its current responsibilities. For example, FDEP is woefully behind schedule on Total Maximum Daily Load development and is regularly behind in enforcement actions related to the National Pollutant Discharge Elimination System permit program. Additional responsibilities will divert resources away from these critical pre-existing duties. It is important to note that the Environmental Protection Agency (EPA) would not provide any federal funding to Florida for the administration of the 404 permitting program. Due to the value of these resources to our state, the large scope of this permitting program, and FDEP's already limited resources, FDEP's assumption of this responsibility would not guarantee the level of protection that our water requires.

### The Public's Concerns

There has been substantial public opposition to the state's proposed assumption of Section 404 authority. Despite this opposition, FDEP has continued to move forward, limiting the opportunity for public involvement in the rulemaking process and has failed to be transparent in rule development. Many questions from the public remain unanswered, including a clarification as to precisely which waters would remain under federal jurisdiction. Furthermore, given the current uncertainty regarding the very definition "Waters of the United States" under the Clean Water Rule, it is clear that FDEP's rule making on this matter is premature.

Waterkeepers Florida has voiced opposition to state assumption since 2018 when the group submitted a letter to the Senate Environmental Preservation and Conservation Committee voicing

opposition to SB 1402 and the partner House bill. Additionally, the details of the current proposal were not included in the original legislation.

The Clean Water Act was developed, in part, because state governments were failing to manage waters in a manner that was protective of public and environmental health. Power to implement the Section 404 permit program was thus assumed by federal agencies. FDEP's attempt to take this authority undermines this purpose and puts Florida's water resources at stake.

### Request for Hearing

Waterkeepers Florida is of the position that members of the public should be permitted to participate in this rule-making to the fullest extent that the law provides. Public input is integral to the agency decision-making process and any proposal this large in scope should be subject to multiple public hearings allowing for public involvement across the state. Waterkeepers Florida thus requests a series of public hearings throughout the state. *See* Fla. Stat. § 120.54(3)(c)1 and Rule 28-103.004, F.A.C. Specifically, we request hearings in Miami, Jacksonville, and Ft. Myers.

Waterkeepers Florida also requests that the Department release all materials it intends to submit to the EPA as part of any CWA Section 404 assumption application package. This will allow for public access to important decision-making documents upon which the Department relies and will allow for more substantive public comment on the proposed rules.

Sincerely,

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Board Chair of Waterkeepers Florida  
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**MIAMI  
WATERKEEPER®**

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**TAMPA BAY  
WATERKEEPER®**

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April 20, 2020

Florida Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, FL 32399

Attn.: Heather Mason  
Via Email: [Heather.Mason@FloridaDEP.gov](mailto:Heather.Mason@FloridaDEP.gov)

**RE: Proposed Rules Related to State Assumption of the Clean Water Act Section 404  
Program: Public Comment Deadline Suspension Request**

Ms. Mason,

On behalf of our respective organizations and our thousands of members, we are writing to express our concerns regard the Florida Department of Environmental Protection’s (“FDEP or the Department”) proposal to assume jurisdiction under Section 404(a) of the Clean Water Act, 33 U.S.C. § 1344, for wetland permitting in waters of the United States. This letter speaks specifically to the proposed revisions to Chapter 62-330, the proposed promulgation of Chapter 62-331, the Draft 404 Handbook, and the Department’s Statement of Estimated Regulatory Costs (“SERC”) all of which were published on February 19, 2020.

Each signatory below is an independent organization, member of Waterkeepers Florida, and a member of Waterkeeper Alliance, a global movement of on-the-water advocates who patrol and protect over 100,000 miles of rivers, streams, and coastlines. More than 350 Waterkeeper Organizations worldwide combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law.

On March 23, 2020, the Department issued a notice which superseded the March 11, 2020 Notice of Hearing for the State 404 Program Rulemaking. In the March 23 notice, FDEP announced that the public hearing related to this rulemaking would take place via three separate video conferences in order to remain “[c]onsistent with COVID-19 social distancing guidance from the U.S. Center for Disease Control and Prevention[.]” These video conferences were scheduled for April 2, 6, and 10<sup>th</sup> and the public comment period for the rulemaking was extended until midnight on April 17, 2020.

On April 17, 2020, the Department again notified interested parties that “due to these extenuating circumstances” related to COVID-19, FDEP would hold two additional telephonic hearings on April 24 and April 27, 2020. The Department also extended the public comment period for this rulemaking to midnight on April 30, 2020.

It is the position of Waterkeepers Florida that moving forward with this rulemaking is deeply inappropriate at this time. At the drafting of this letter, there have been more than 26,000 COVID-19 cases in the state of Florida, more than 3,800 hospitalizations as a result of the virus, and more than 780 deaths (see <https://floridahealthcovid19.gov/#latest-stats>). Additionally, more than 450,000 people in the State of Florida have filed for unemployment in the last month as a result of the pandemic. Moreover, K-12 schools across the state will remain closed through the end of the school year, forcing many parents to juggle childcare responsibilities. Finally, on April 1, 2020 Governor DeSantis issued a state-wide stay home order, instructing Floridians to stay home but for essential activities.

Given this body of evidence, we ask: is FDEP's rulemaking an essential activity at this time? We believe the answer to be a resounding "no."

Waterkeepers Florida is deeply committed to ensure public involvement in this rulemaking process. In fact, public involvement is the hallmark of our collective mission. We do not feel that these rulemaking proceedings have been adequately inclusive for all members of the public. Not only is it our position that this rulemaking and its motivations are deeply flawed to begin with, but the Department's attempts to fast track these decisions while the public is preoccupied with a global pandemic is unsettling at best.

We formally request that FDEP suspend Clean Water Act Section 404 rulemaking until, at a minimum, Governor DeSantis has lifted his stay at home order. We also request that FDEP schedule in-person public hearings at that time.

Respectfully,

Lisa Rinaman  
St. Johns Riverkeeper  
Board Chair of Waterkeepers Florida





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