



**STEERING
COMMITTEE:**

Chairman

Bob Graham

Vice Chairmen

Nathaniel Pryor Reed

Lee Constantine

Organizations

Defenders of Wildlife

**League of Women
Voters**

**North Florida Land
Trust**

**1000 Friends of
Florida**

Sierra Club Florida

St. Johns Riverkeeper

Trust for Public Land

Individuals

Craig Diamond

Ryan Smart

Victoria Tschinkel

Estus Whitfield

July 31, 2018

**Florida Conservation Coalition
308 N. Monroe Street
Tallahassee, FL 32301**

**Governor Rick Scott
Plaza Level 05, The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001
Rick.scott@eog.myflorida.com**

Subject: State of Florida Assumption of Section 404 of the Clean Water Act

Dear Governor Scott,

The Florida Conservation Coalition (FCC) is an alliance of over 80 conservation organizations dedicated to protecting Florida's lands, waters, and wildlife. Regarding the State of Florida's delegation process of the Section 404 Program under the Clean Water Act, the FCC is opposed to such delegation due to serious concerns about four unanswered essential questions.

There are many uncertainties regarding state assumption and strong reason for federal and state agencies to abandon this process. As to date, only two states have received this authorization, notwithstanding an accompanying 34 years of litigation as nine other states pursued delegation, serving only to increase legal ambiguity. Florida, more than any state in the nation, depends on its vast freshwater and saltwater wetland systems as the lifeblood supporting healthy habitats, providing flood protection and supplementing our water supply. These wetlands are frequently contiguous to Section 10 Waters under the Federal Rivers and Harbors Act of 1899, and are home to more than 124 federally threatened or endangered plant and animal species.

What water bodies will be subject to delegation? During this delegation process, Floridians have not been given the chance to review a proposed list of assumed waters, a step we hope to see corrected. Additionally, we are aware of conflicting opinions how or if contiguous or adjacent wetlands will be included. Imagine the controversy when a predetermined list is announced as to which waters will be permitted under the delegation; further reason to provide ample time for a robust public process.

2. NEPA Compliance

How will delegation observe the integrity of the National Environmental Policy Act? The issuance of Section 404 permits is a federal action and subject to the National Environmental Policy Act. Through a sophisticated engineering and economy analyses and public review and comment period, the NEPA review process ensures that large projects with a multitude of interstate consequences are scientifically screened for their effects on water quantity and quality, secondary effects of stimulated growth, and the impacts upon species which might range far beyond the affected region. Florida, with its history of large-scale phosphate mining, regionally extensive real estate developments, and inefficiently planned public works projects would be especially hard hit without these analyses. These issues prove problematic in both Michigan and New Jersey, the two states which have assumed Section 404. We are concerned about the lack of federal legal requirement for Section 404 permits.

3. ESA Coordination

How will Section 7 of the Endangered Species Act be administered? Like NEPA compliance, the “interagency cooperation” section of the ESA is also threatened by state assumption. This regulatory section prohibits federal agencies from taking any action which is likely to “jeopardize” the continued existence of an endangered species or result in the adverse modification of the species’ critical habitat. Despite the requests of individuals and member organizations of the FCC, we have only had the procedural response that the State of Florida is developing Memoranda of Agreement with wildlife agencies to “handle” ESA oversight. Again, we are deeply disturbed by the lack of public discourse or transparency in the drafting of such MOUs.

4. Procedural Questions

There are a number of substantive administrative issues regarding the State of Florida’s ability to assume and delegate Section 404. For example, proposed permits are routed various ways through state and federal agencies. *Does the federal government review the staffing, scientific, administrative and legal elements for administering the delegation?* Florida continuously maintains that new staffing would not be required and that “multi-disciplinary centers” have been created to serve the assumption process. If so, this adds to our concern that state assumption will simply reiterate Florida’s regulatory process, strengthening our unease regarding the failure of delegated programs in considering NEPA and ESA protections. Again, draft MOUs for permitting processes and adequate staffing plans have not been made publicly available for this element of state assumption.

Until these four essential questions are robustly and publicly reviewed, the FCC opposes further action in proceeding with Section 404 delegation.

In closing, we have expressed our grave concerns about this effort since our legislative session last spring, with a number of our members opposing the assumption process outright. The Florida Conservation Coalition appreciates the opportunity to comment on this important matter; however, we are disappointed

by the lack of “public input and scrutiny” in the DEP’s rulemaking process which you referenced in your March 23 letter to Secretary Detzner.

We are no further along in our understanding about the specifics of the state’s delegation process, reinforcing our opinion that Florida’s vital wetlands will receive dangerously lower levels of protection if delegation should occur.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Graham", with a long horizontal flourish extending to the right.

Bob Graham

Chairman
Florida Conservation Coalition

CC: Governor Rick Scott

Julia Espy, Deputy Chief of Staff, Governor Rick Scott

Pam Bondi, Attorney General

Colonel Jason Kirk, District Commander, US ACOE

Donald Kinard, Chief, US ACOE

Trey Glenn, Region 4 Administrator, EPA

Noah Valenstein, Secretary, FDEP

John Truitt, Deputy Secretary, Division of Water Resource Management, FDEP

Alex Reed, Director, Division of Water Resource Management, FDEP

Larry Williams, State Supervisor, US FWS