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Jeaneanne Gettle: Good morning. I'm Jeaneanne Gettle, Director of the Water Division at the US Environmental Protection Agency's regional office in Atlanta, Georgia. Welcome and thank you for joining this public hearing concerning Florida's request to assume administration of a Clean Water Act Section 404 program. We recognize that the natural resources in Florida are critically important to each of you, your communities, and to the State of Florida. Our agenda today is very simple. I will begin by making brief remarks, provide background and context. Then our facilitator will explain the comment process, and we will start the public comment process in approximately 15 minutes. I'm here virtually with several EPA colleagues. We will be listening to your comments throughout this hearing, so I would like to introduce them to you. As I say their name, they will have their video on. Rosemary Calli, Tom McGill, Matt Hicks, Kathy Hurld, Kavita Nagrani, Christopher Parker, Mita Ghosh, James Morgan, Whitney Beck, Michael Creswell, Erica Jones, Kelly Laycock, and Simma Kupchan will be joining us by the phone.

To set the stage for this hearing, I'd like to provide some background and context. On August 20th, the US Environmental Protection Agency received from the governor of the State of Florida a complete program submission for regulating discharges of dredged or fill material into waters within the jurisdiction of the state in accordance with the Clean Water Act. Pursuant to Clean Water Act, Section 404(h) and EPA's implementing regulations, EPA opened a 45-day comment period which ends on November 2nd, 2020. As part of this process, EPA has also scheduled two public hearings, the one today and another public hearing on October 27th. In addition to our review of the package submitted by Florida, EPA also initiated a programmatic consultation under Section 106 of the National Historic Preservation Act, or NHPA, and is soliciting comments pursuant to NHPA, implementing regulations during the 45-day comment period ending November 2nd, 2020. [crosstalk]

EPA has three primary roles pursuant Section 404(g) of the Clean Water Act. The first role is to work with states or tribes to enhance their program capacity and capability through mechanisms such as Wetland Protect Program Development Grants [crosstalk]-- Jan, can you mute the person speaking, please? The agency's second responsibility is to review requests by states and tribes to assume administration of a Clean Water Act 404 permitting program. This is the stage that we are currently in relative to Florida's request. Under the Clean Water Act, EPA must evaluate the request and approve or disapprove the request based on factors I will speak about in a moment. The third role for EPA is that of oversight. Whenever a state or tribe assumes a program, EPA retains an oversight role. For purposes of the Clean Water Act Section 404, that would generally entail coordinating federal comments, reviewing programmatic modifications, and if necessary, withdrawing program approval.

In order to approve a state or tribe's assumption of a Clean Water Act Section 404 program, the EPA must find that the program is consistent with and no less stringent than the requirements found in the Clean Water Act and associated implementing regulations. The assumed program must have equivalent scope of jurisdiction, meaning it covers all waters of the United States not retained by the Army Corps of Engineers. It must regulate at least the same activities. It must provide sufficient public notice and allow for public participation. The program must also ensure compliance with the regulations known as the Clean Water Act Section 404(b)(1) Guidelines and have adequate enforcement authorities.

The purpose of today's hearing is for EPA to listen to comments regarding Florida's request to assume administration of a Clean Water Act Section 404 program. Today EPA's role is to listen. So while during this hearing my EPA colleagues and I may occasionally ask a question or respond to a question of clarification, we will not otherwise be engaging with or responding to commenters. This hearing is being recorded for transcription purposes, and that transcription will become part of the official administrative record for this request. In addition, you can continue to provide written comments until November 2nd, 2020 as described in EPA's Federal Register notice on regulations.gov. If you are making an oral comment today and would like to also provide that to us in written

comment form or send us any additional information or attachments associated with your oral comment, then we certainly encourage you to do so by November 2nd, 2020, the public comment deadline.

Following the close of the public comment period, EPA will review and consider all comments received as well as the complete submittal from Florida before we make a final decision about this request. Oral and written comments will be given equal consideration. As part of that process, EPA will prepare a responsiveness summary, which will provide EPA responses to the significant comments received during the comment period. I want to emphasize that no decision on Florida's request has been made at this time. After considering Florida's submittal, all comments, data, and information received through the November 2nd, 2020 comment deadline, EPA's regional administrator Mary Walker will make a final decision by December 17th. If EPA approves the state's program, we will publish a notice of this decision in the Federal Register along with the agency's responsiveness summary of significant comments. If EPA disapproves the state's 404 program, we will notify the state of the reasons for the disapproval and of any revisions or modifications to the state's program which are necessary to obtain approval. This public hearing is your opportunity to hear—is our opportunity to hear directly from you. Thank you again for being here and participating in this process. I will now turn the floor over to Jan Connery, the facilitator for this hearing, to describe the oral comment process we will follow today and to moderate this hearing. Thank you very much.

Jan Connery: Thank you, Jeaneanne. My name is Jan Connery. I'm with ERG, a contractor to EPA. And as Jeaneanne said, I will be serving as your facilitator for this hearing. I'm working today with my colleague Meredith Outterson at ERG, who is our webinar coordinator for the hearing. I'm very pleased to see that we are joined by over 130 members of the public this morning. Twenty-four of you have signed up to make an oral comment, and many others of you are here to listen to the comments today. Welcome, everyone, and thank you so much for participating. As Jeaneanne said, the purpose of this hearing is for EPA to hear oral comments from the public. So I'm going to start by describing the comment process that we'll be following. First I'm going to describe the order in which we'll take commenters, and then I will provide details about the process.

So we're going to start with comments from four public officials, and then after that, we'll take comments from folks in the order that each of you registered to comment. We have organized commenters into five time blocks, a half hour each, and each commenter should have received an email yesterday from Meredith at ERG notifying you which group you're in and your unique speaker number. So as we get to each time block, I'm going to be displaying the names of the commenters in that block in the order that you will be speaking. And that way, everyone at this hearing will be able to clearly know who is speaking at each time and who is on deck to speak next. So if the listed commenter isn't available at the time that I call on them, I will simply move to the next person on the list. And then if they are able to join us later, I will fit that commenter in as soon as we can so that we are able to hear their comment.

If we get ahead of schedule, as sometimes happens on these virtual hearings, then I will move on to the next person on the list. And we—sorry. If we get ahead of schedule, we may take short breaks. But if we do that, I will provide clear information to you about when we will reconvene. So our hearing is scheduled to run for up to three hours. And we also anticipate that we may be able to fit in—if we have enough time when we're ahead of schedule, we may be able to fit in additional commenters in that time or at the end of the hearing, as time allows. Now, this would be folks who didn't sign up to comment, didn't preregister to do so but are on the hearing now and are thinking, "Well, actually, I would like to make a comment." So if there's anyone who is thinking would like to comment today, even though you didn't preregister, what you can do at any time during this hearing is use the hand icon to raise your virtual hand. That way, we'll be able to see who's interested, and then as we can, if we have the opportunity during the hearing because we're a little ahead of schedule or at the end, we'll be taking folks in the order that you have raised your virtual hand. So I wanted to let you know that now so you'll be able to think about that and let us know if you're interested. So whether you're preregistered or whether we're able to fit you in, everyone will be following the comment process I'm going to describe to you now. Apologies, I should have advanced to this slide. Okay. So this is speaker order. I've talked about that. Yes. And you'll be receiving a chat message shortly before your speaker group is called. And you'll be unmuted when we announce your name.

Okay. So the comment process. To minimize background noise, we have all of you muted right now. And I will be calling on each commenter when it's your time to speak, and then you will be unmuted by Meredith, and you'll know

that you're unmuted because you'll hear an automated voice telling you that. I'm going to ask you to start by stating your name and affiliation, and if you're representing yourself, then you just need to say, "Representing self." So as was noted in the original a Federal Register notice and other communications, every commenter will have a maximum of five minutes to speak. And it's fine if you take less time, but five minutes is your maximum. So after you've stated your name and affiliation, I'm going to be starting an electronic timer that you'll be able to see on screen. So if you're commenting, please keep an eye on that timer so that you can be aware of when you're approaching your five minutes. As a matter of fairness to all commenters, it is important to respect that time limit, so be sure to wrap up as you see you're approaching five minutes. Now, if you had more to say that you weren't able to fit in during that limit, as Jeaneanne said, you are welcome and encouraged to submit the additional information as a written comment no later than the November 2nd public comment deadline.

So after you've made your comment, please stay on the line. Occasionally, EPA may have a question of clarification. If so, Jeaneanne will ask the question at that point, and you may respond. And then when the clarification is concluded, we will remute your line and proceed to the next commenter, using the same process. So for commenters, in the email that Meredith sent to you yesterday, we recommended that if you can, connecting by phone during the time you're making your comment for the audio portion offers a better audio quality. I mean, obviously, you'll still be connected to the webinar visually. But we do recommend connecting by phone if you're making a comment, if that's convenient to do. Meredith provided details about how to do that in the email she sent yesterday. If you're going to do that, please try to do that and connect by phone at least 20 minutes prior to the anticipated time of your comment. And if you experience any-- or we observe that you experience any audio issues any time during your comment, the beginning or in the middle, what we're going to do is mute your line, and Meredith will send you a message to suggest adjustments to your audio and continue working with you till we solve the issue. And then we'll give you a chance to make your comments as soon as we can, after we resolve the issue.

So lastly, just a couple of things for anyone on today's hearing, whether you are commenting or listening. If you are experiencing any technical difficulties, whether you're a comment or a listener or have any questions, you can contact Meredith by using the questions box with the questions icon, and she'll work with you to troubleshoot that issue. And as we are about to start the comment process, I just want to say finally that Jeaneanne and all the folks on the EPA team who are here to listen are-- well, we'll be listening throughout the hearing and taking notes. As the lead official for this hearing, Jeaneanne will be on video the entire time. But that said, you'll see her taking notes and perhaps taking a drink of water and so on, as she would normally do if this were an in-person hearing. But she would like you to know that she is as present for you and listening. So you'll be observing that during this hearing. Okay. So we are now ready to move to the first set of commenters. Here you see the list of folks who are in the first group. And I believe you can now see the timer on the screen over in the lower right. And I will be turning off my video. You don't need to see me anymore. Our first commenter is Annette Taddeo. So Annette, would you please begin by stating your name and affiliation? And then you can go right into your comment, and you'll have five minutes at that point.

Annette Taddeo: Thank you very much. Good morning. This is Senator Annette Taddeo. I represent Senate District 40 in the Florida Senate. I'm here to speak against the State of Florida's request. The EPA should allow the Army Corps to maintain its jurisdiction over Florida's water rather than grant the state's request for jurisdiction. The Army Corps is best able to achieve the necessary level of review due to their historic expertise and resources. The fact of the matter is the Florida Department of Environmental Protection does not have the resources to undertake this massive permitting responsibility. The state agency did not have the resources before the recession, and it certainly will not have them in the near future, when the Florida legislature is expected to make budget cuts because of lost tax revenues. Wetlands are critical to cleansing water and maintaining a natural infrastructure that provides resiliency during storms. In the face of increasing development statewide, the protection and restoration of Florida's wetlands and water resources must be given the greatest possible attention. Furthermore, during these uncertain times, Florida should focus on the pandemic and not force through rash changes in environmental policies. Thank you for giving me the chance to talk about this.

Jeaneanne Gettle: Thank you, Senator Taddeo. I don't believe that we have any clarifying comment or question.

Jan Connery: Okay. Great. Thanks, Jeaneanne. It looks like our second speaker, Ananta Nath, is not yet with us, so we're going to go down to the next speaker, which is Lauren Peters. So Lauren, would you please begin by stating your name and affiliation? And then you'll have five minutes for your comment.

Lauren Peters: I'm Lauren Peters of the Florida Department of Transportation District One. And I will say I had requested to comment because I was unsure of whether or not I would want to speak on this matter. And at this moment, I have no comment.

Jan Connery: Oh, okay. That was fast.

Thank you.

Thank you very much. Right. Then we will move to the next speaker, and that's Noah Valenstein. Noah, would you please begin by stating your name and affiliation?

Justin Wolfe: Good morning and thank you. This is Justin Wolfe. Can you hear me?

Jan Connery: Oh, Justin Wolfe instead of Noah?

Justin Wolfe: I just wanted to make sure you could hear me. I'm the General Counsel for the Florida Department of Environmental Protection, and I'm speaking today on behalf of Secretary Valenstein and Florida DEP.

Jan Connery: Okay. We can hear you just fine. Please go ahead.

Justin Wolfe: Thank you. First we wanted to thank EPA for holding today's public hearing concerning the State of Florida's application to assume the Clean Water Act Section 404 program. For the first time in decades, a state has undertaken the significant task of submitting a complete application to obtain approval of a Section 404 program. This was an enormous effort by FDEP and other stakeholders, and we greatly appreciate EPA's timely and thorough review of our program application materials. If approved, assumption of a 404 program will be a major achievement for both EPA and the State of Florida. In these brief remarks, I wanted to address a few key issues for EPA's consideration and to ensure the public that is-- ensure that the public is fully informed about how Florida's 404 program would operate in full compliance with federal and state law.

First, Florida has the legal authority and agency resources necessary to properly and fully implement the Section 404 program for the state. Upon assumption, Section 404 program will be administered by FDEP through its dedicated staff of over 200 wetland scientists and professionals across the state. Florida's intimate-- or FDEP's intimate knowledge of state aquatic resources, coupled with the efficiency and proven success of its own wetland permitting program will ensure that the Section 404 program will be implemented in a scientifically sound and protective manner. Moreover, Florida is well-prepared to address the compliance and enforcement responsibilities of the program. Governor Ron DeSantis recently signed into law the Environmental Accountability Bill, which strengthens FDEP's enforcement capabilities by increasing the monetary amount of penalties up to three times the amount required by federal law.

Second, Florida's approach is fully protective of the environment, including our state's wetlands and fish and wildlife species. FDEP has entered into agreements with the US Army Corps of Engineers and EPA as well as a pending agreement with the US Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission to ensure a robust program that provides full protection for our state's wetlands and species. Likewise, Florida's approach provides for a programmatic Endangered Species Act consultation at the front end of the process, when EPA is reviewing the 404 assumption application as well as allows for site-specific technical assistance under the terms and conditions of an anticipated programmatic biological opinion and its incidental take statement. In no way, shape, or form does Florida's approach bypass species protection. The opposite is true. Florida's approach ensures a careful comprehensive process of engagement with both federal and state fish and wildlife agencies to ensure that 404-permitted activities do not jeopardize listed species or adversely modify critical habitat. In many ways, Florida's program will go above and beyond the requirements of federal law and ensure more robust protections for our state's threatened or endangered species.

Florida's 404 program will also ensure protection of historic and cultural resources in the state. We have entered an agreement with the State Historic Preservation Office, setting forth a consultation process called historic properties review for assessing the potential effects that the state 404 program permit application may have on historic properties and for avoiding, minimizing, or mitigating any adverse effects on historic properties. The historic properties review includes consultation with tribes, local governments, applicants, and the public and is designed to complement established procedures for permit processing and public notice under the state 404 program. We are also committed to working together with Florida's tribes. Our application resulted from extensive cooperative engagement with the Seminole Tribe of Florida and the Miccosukee Tribe of Florida, as reflected in the state's program submittal.

In closing, as an important part of the Clean Water Act's cooperative federalism structure, 404 assumption will ensure greater protection of Florida's water resources, reduce duplication of effort and overall expenditures by state and federal authorities, and better align the Section 404 program with other programs for which Florida already has primary responsibility. Approval of Florida's application would also demonstrate a workable pathway for states interested in administering their own Section 404 programs while also providing valuable flexibility for EPA and individual states to develop programs that match state-specific needs. Thank you very much.

Jan Connery: Thank you, Mr. Wolfe.

Okay. Thank you. Appreciate your staying within the time limit. All right. So we will move to our next speaker. That's Christina, and apologies if I mispronounce your name, but Reichert. Christina, would you like to state your name and affiliation for us and then begin your comment?

Christina Reichert: Hello. My name is Christina Reichert, and I'm providing testimony on behalf of Earthjustice. The Department of Environmental Protection's incomplete and inadequate application to take over the Clean Water Act 404 program must be rejected. Florida's wetlands are vital for the safety and wellbeing of Floridians, with their role in keeping our drinking water clean, controlling floods, and creating a buffer against hurricanes. Wetlands also provide crucial habitat for the incredible biodiversity in the state. Protecting wetlands serves national interests and resiliency, clean water, and biodiversity. The department's track record for protecting the environment in Florida has proven that it should not assume this program.

First, we request that the EPA reverse its September 2020 determination that the department's application is complete because it has major gaps that include meaningful public comment. The public does not currently have the information necessary to meaningfully comment on the state's proposal, and EPA does not have the information it needs to ensure that the state's program will satisfy the Section 404(b)(1) Guidelines. At the state level, the department left substantial questions unanswered, and the public was unable to fully weigh in on the department's plans. The department promised to answer those questions when it submitted its application to EPA, but they remain unanswered. First, the department's application fails to identify the waters that Florida's program would cover, which is critical information for the public to know so they can assess how their interests will be affected. Second, the department has not explained how the state's listed species will be protected and instead points to an anticipated programmatic biological opinion that was not included in the state's application package and is not available to the public. In fact, this process is still being completed. These significant gaps will only cause confusion and create a risk of legal liability. The EPA must reject the department's attempt to speed through this process with a partial application when assumption implicates the future protection of vital state wetlands.

Second, we ask the EPA to reject the department's application to assume the 404 program because the department is simply unable to implement, operate, and enforce the state 404 program without additional funding and staffing. The department has failed also to show that taking over the 404 program will not jeopardize the survival and recovery of protected species in the state. And federal review and protections are essential to safeguarding Florida's critically important wetlands, drinking water, and biodiversity. First, the department lacks the resources, staff, and funding to implement, operate, and enforce the state 404 program, especially given the economic effects of COVID-19. The department has proven ill equipped to adequately protect the environment and cultural resources in Florida, given dramatic cuts to staffing, reductions in expertise, and inadequate enforcement of existing environmental mandates. Despite its inability to implement and enforce its current programs, the department claims it needs no

additional resources to run a state Section 404 program. This position is unrealistic and flies in the face of other states that spent millions of dollars to create and implement their 404 programs.

Second, Florida's unprecedented approach to listed species must be rejected. The department has proposed to engage in a one-time programmatic consultation that does little more than identify procedures for overburdened and inexperienced state employees to follow when processing permits. Although programmatic consultation can provide a framework for future proposed actions, the truncated consultation in Florida's proposal is in contravention to the ESA's mandate, implementing regulations, and court order holdings. Finally, Floridians cannot afford to lose the protections of federal laws that are triggered when federal agencies operate a 404 program. Federal laws are essential to protect Florida's vital wetlands from local political pressure and special interests, particularly given the fast population growth and development in the state. Federal operation of the 404 program triggers a myriad of other federal protections, including the Endangered Species Act that protects the rarest and most at-risk wildlife in our state, the Magnuson-Stevens Act that protects the essential fish habitat in our world-class fisheries, the National Environmental Policy Act that ensures the public has a voice in government decision-making, and the National Historic Preservation Act that protects our history and cultural resources. The State of Florida has no substitute for these federal laws and protections. Moreover, Florida does not provide the same access to courts as is available under federal law. The EPA must reject this request.

Thank you.

Jeaneanne Gettle: Thank you, Ms. Reichert.

Jan Connery: Okay. With no questions of clarification, we will move to the next set of speakers, and that is speaker group two. Our first speaker here is Lindsay Dubin. Lindsay, please begin by saying your name and affiliation.

Lindsay Dubin: Hi. My name is Lindsay Dubin, and I'm a staff attorney at Defenders of Wildlife. Thank you so much for the opportunity to speak today. While we are opposed overall to the State of Florida's assumption of the Clean Water Act 404 permitting program, we're today asking the EPA to suspend permit review and provide members of the public with an opportunity to comment on Florida's completed application. And in order for the application to be completed, at a minimum, it must include the biological opinion and the incidental take statement resulting from EPA's and the Fish and Wildlife Service's consultation on Florida's assumption request. Now, we have serious concerns about the impact that Florida's assumption of the Section 404 permitting program will have on wildlife, such as the iconic Florida panther, Florida manatees, loggerhead sea turtles, the Saint Andrew beach mouse, and piping plovers. And their predicaments are made all the more dire by impacts we've started to see involving climate change. We question the state's ability to ensure the safety of these and dozens of other species that are on the brink of extinction, where it is in control of this program.

Now, state environmental agencies already are stretched quite thin. Budgets have shifted in light of the pandemic. Environmental enforcement has plummeted when compared to 10 years ago, and the state has made no commitments to adding staff or financial resources to its program administration. Now the public is being asked to take a leap of faith that the state can handle this important responsibility under Section 404. However, we've seen no demonstration that this is the case. Now, this is because the Clean Water Act and its regulations provide that federal agencies and, in turn, any state that assumes 404 permitting control can guarantee before issuing a permit that a project won't jeopardize the future existence of a listed species, nor will it adversely modify critical habitat. And members of the public have a right to comment on whether or not, for this program, we'll be able to achieve that same end. However, it's our understanding that the State of Florida will use a programmatic biological opinion and a one-size-fits-all incidental take statement on its request to assume control of the 404 program to develop these guardrails. So the application that was submitted by the State of Florida was incomplete because it didn't fully address its responsibility to ensure of its no-jeopardy mandate. And so as members of the public, we therefore have not been able to see what this program will look like and what its impacts will be on endangered species.

A little bit less than a month ago, I sent an email to the agency requesting information on this process, and I was told that consultation was still underway, so no ITS nor a buyout had been completed. I had asked for the biological evaluation, which is a precursor to formal consultation, and I was told that I would need to submit a Freedom of Information Act to receive that documentation. It is unclear to me whether or not consultation has been completed,

but either way, in order for members of the public to be able to assess what the impacts that this program will have on endangered species and whether or not Florida will be able to achieve the no-jeopardy mandate in the Clean Water Act regulations, members of the public must be provided with information resulting from this consultation process because the application that we've been provided is simply incomplete. And because of that, we are now requesting that EPA suspend consideration of this assumption package until the application has been completed and until the public has been given a new window to comment of at least 45 days on the completed application, which must include the biological opinion and the ITS. Thank you so much for your time and consideration.

Jeaneanne Gettle: Thank you, Ms. Dubin. We have no follow-up questions.

Jan Connery: Great. Thank you, Lindsay. Next speaker, and that is Kelly Cox. Please go ahead, Kelly.

Kelly Cox: Thank you and thank you for the opportunity to speak. My name is Kelly Cox. I'm the general counsel for Miami Waterkeeper. Today I'm providing testimony on behalf of Miami Waterkeeper and Waterkeepers Florida. Miami Waterkeeper is a Miami-based nonprofit organization that seeks to defend and protect South Florida's watershed. We operate in Miami-Dade and Broward counties, and we are members of the Waterkeeper Alliance. Waterkeepers Florida represents more than 45,000 square miles of watershed in the State of Florida. Miami Waterkeeper and Waterkeepers Florida are both opposed to the State of Florida's request to assume Clean Water Act Section 404 authority from the Army Corps. And that's because Florida's waterways are uniquely connected and are critical to our public health, our economy, and our environment. The State of Florida relies on a clean water economy. Everglades National Park alone generates more than $100 million annually in tourism revenue, and our outdoor recreation industry generates $58.6 billion annually. Our state's widely recognized as the sport fishing capital of the world, and our waterways support billions of dollars in commerce each year and create tens of thousands of jobs for Floridians.

Our state 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 ERP permits overlap in that both must be obtained for impacts above regulatory thresholds in federal waters. The additional oversight provided by the federal government is critical to adequately protecting our water resources. What's more, this delegation to FDEP would add additional regulatory burden to the department, 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 enforcement actions related to the National Pollutant Discharge Elimination System Permit Program. Miami Waterkeeper and waterkeeper organizations across the state have actually had to initiate independent and NPDES permit compliance review to attempt to bridge this gap in regulatory enforcement, a duty that surely should not be tasked to a nonprofit organization.

That said, FDEP is not well positioned to assume the additional responsibilities and permanent demands associated with this program. Additional responsibilities will divert resources away from these critical pre-existing duties, and the department lacks the resources, staff, and funding to implement, operate, and enforce the 404 program. Our state is experiencing an economic downturn due to COVID-19, and the department has felt these effects. Budgets have been cut and staff support has been reduced. And yet, FDEP continues with this application that would cost taxpayers millions of dollars to just get it off the ground. FDEP should focus instead on their existing obligations, such as enforcement and mitigation rather than seeking additional responsibilities that we already know they will not be able to adequately oversee. The department's claims that it can fold a 404 program into its existing program should be rejected. It's not feasible and it's not tenable for Florida's water resources.

Additionally, there has been substantial public opposition to the state's proposed assumption of Section 404 authority. FDEP has moved forward with this application during a global pandemic during which families are struggling to put food on the table and care for their loved ones. Despite this opposition and these very clear limits on public participation, FDEP has continued to move forward with this application, and that's deeply inappropriate, it's not inclusive, and it doesn't reflect the public's position on this matter. So on behalf of Miami Waterkeeper and Waterkeepers Florida, our hundreds of members and thousands of acres of watersheds, I urge the EPA to reject FDEP's 404 assumption application package. This assumption is not in the best interests of Floridians or Florida water resources. Thank you.

Jeaneanne Gettle: Thank you, Ms. Cox. We have no clarifying questions.

Jan Connery: Thanks, Jeaneanne. In that case, we'll move to our next speaker, and that is Amber Crooks. Amber, please begin by stating your name and affiliation.

Amber Crooks: Yes. Hi. You can hear me okay?

Jan Connery: Yes. Just fine, Amber. Please go ahead.

Okay. Great. My name is Amber Crooks. Good morning. I'm here today on behalf of the Conservancy of Southwest Florida and over 7,000 supporting families. The conservancy was founded over 50 years ago to protect Rookery Bay and the Ten Thousand Islands from a road to nowhere. To this day, we continue to comment at all three levels of government, local, state, and federal, three levels that we believe should remain to protect our wetlands from overdevelopment and drainage. We ask that you deny Florida's request to assume the 404 program, as we do not believe the program meets the requirements, the state does not have the budgetary resources to take it on, and the implications to the National Environmental Policy Act and the Endangered Species Act are far too great to overcome. Throughout the process, Florida has stated that they do not intend to charge applicant fees for this program and that they can take on the awesome burden of the Clean Water Act Section 404 program without additional staffing or administrative funding. However, the state and federal permitting programs are distinctive, not duplicative, as the state program defines and assesses cumulative impacts and secondary impacts in a different way than the Clean Water Act.

Further, FDEP staff will have a large learning curve of implementing 404(b)(1) guidelines and coordinating endangered species cases of which they are not currently knowledgeable. FDEP will be relying on a state wildlife agency, the Florida Fish and Wildlife Conservation Commission, to perform vital functions in their effort to attempt compliance with the ESA. However, FWC's financial commitments and expected workloads are not a part of this application, yet the MOU, which as we know, the Federal Service hasn't yet signed, states that FWC will be relied on to analyze effects and minimization measures relative to Florida's 130-plus federally listed species although trying to also uphold their own mandates for state species. The State of Florida is in a fiscal freefall. Even before the current health crisis, the state was not providing assurances of sufficient resources. Now we see the state has an estimated $2.7 billion shortfall, and I recently heard it may actually be up to about $5 billion for the next fiscal year, which will of course impact FDEP and FWC's ability to take on the 404 program.

Secondly, we are extremely concerned about the impact of assumption on federal protections. Today I'll focus with my limited time on NEPA. The language in FDEP's program does not compare to the benefit of having NEPA as a tool to protect our wetlands. FDEP's program does not include initiating environmental impact statements when a project poses significant impact to the environment. FDEP has simultaneously claimed that the elimination of NEPA would be a cost savings to the regulated community while also stating that the 404(b)(1) Guidelines are equally protective. But both cannot be true. We have seen firsthand the power of NEPA to help protect wetlands. In 2010, the Army Corps announced two proposed EISs down here in Southwest Florida that they deemed necessary to protect drinking water supplies and conservation lands. This prompted the withdrawal of large mining projects, totaling over 13,000 acres in one EIS study area. In the other EIS study area, the effort resulted in a reduction of 500 acres of wetland impacts to 60 acres of wetland impacts, all while FDEP, on the other hand, had permitted all of these projects in just a three-year period, allowing 100-- or excuse me, 1,000 acres of impacts in those wetlands. The Army Corps' use of NEPA is the major reason that these projects are not already built, which would have caused irreversible damage in the heart of the Western Everglades.

And finally, although I could spend some time going into detail about how unsuited the FDEP permitting system is for public noticing purposes, I've got limited time, so I want to conclude our comments by calling into question the validity of the list of retained waters that were included in Florida's submittal. The conservancy has provided a list of waters that should be reviewed for inclusion, and the Army Corps itself had a much longer list, 17 pages versus 16 pages of waters it had actually released for public commenting that also appear to contain waters that should be reviewed for retention. As you know, wetlands help cleanse water, can store up to a million gallons of water per acre during times of flood, and as Naples felt during Hurricane Irma, it helps protect our communities from storms. So we

need every tool in the arsenal to protect our remaining wetlands, both as it's related to our quality of life but also to our economy. We respectfully ask that you deny Florida's request to assume the 404 program. Thank you so much.

Jeaneanne Gettle: Thank you, Ms. Crooks. We have no clarifying question.

Jan Connery: Great. Thanks. So our next speaker, Brian, isn't here yet, but we are on his schedule, so he may join us, and we'll circle back to him. So what we're going to do is take Preston, who is here, as our next speaker. I also see that two folks have raised their virtual hands, Christopher and Michelle. So because we're ahead of schedule, after Preston, Christopher, heads up. I'm going to be calling on you and then Michelle. And both of you will be commenting in exactly the same way that you've been observing everyone else, stating your name and affiliation, and then up to five minutes for a comment. So right now we'll go to Preston. Preston, please begin by saying your name and affiliation.

One moment, Preston.

Meredith Outterson: Just unmuting you. One second. There you go. Please go ahead, Preston.

Jan Connery: Preston, we can't hear you. Are you there?

Meredith Outterson: Preston, you're unmuted on our end, but please be sure that your computer or phone is unmuted on your end.

[silence]

Jan Connery: Okay. Well, I think what we may need to do is also circle back to Preston. So Meredith, perhaps you can work with him and see if we can get his audio going. So let's go ahead with Christopher Emmanuel. Meredith, can you unmute Christopher, please?

Meredith Outterson: Yes. Christopher, you've been unmuted.

Christopher Emmanuel: Thank you very much. My name is Christopher Emmanuel. I'm a policy director at the Florida Chamber of Commerce, the state's largest business association. The Florida Chamber of Commerce [crosstalk]--

Jan Connery: Mr. Emmanuel, could you spell your last name for me, please?

Christopher Emmanuel: Forgive me. It's Emmanuel. That's Echo, Mike, Mike, Alfa, November, Uniform, Echo, Lima.

Jan Connery: Thank you very much. I appreciate that.

Christopher Emmanuel: The Florida Chamber of Commerce appreciates the EPA and the State of Florida's efforts to transition the 404 wetland permitting authority to the state, and we fully support the EPA's approval of Florida's formal request to assume this program. The significance of the EPA and the State of Florida's progress towards establishing a state Section 404 permitting program cannot be overstated. You and your talented team at the EPA should be commended for overcoming the factors that have stymied other efforts for the past 40 years for this important assumption. And the EPA and the state are on the precipice of a major victory for cooperative federalism. The state's proposed program will boost the protection of Florida's wetlands by having some of the same statewide team of experts who already administer Florida's statewide wetlands programs also administer this similar 404 program. This streamlined approach is good for Florida's environment, supported by Florida businesses, and passed the Florida legislature with bipartisan and near unanimous support. The Florida Department of Environmental Protection has developed a comprehensive permitting program that carefully and completely protects Florida's natural resources in the same way that the EPA is a well-funded, well-structured, and well-thought-out system. This robust program easily meets the Clean Water Act's assumption criteria under Section 404, and accordingly, it should be approved. On behalf of Florida's businesses and residents, the Florida Chamber of Commerce appreciates your considerations and respectfully asks for you to support the FDEP's request to assume this program. Thank you.

Jeaneanne Gettle: Thank you, Mr. Emmanuel. We have no follow-up questions. I would just comment that if you weren't on our original schedule and you are going to comment, I would appreciate if you would spell your first and last name so that we have it correct in the record. Thank you.

Jan Connery: Okay. Great. Well, we are going to move on to the second person who has raised their virtual hand to let us know that they would like to comment. And if anyone has joined us since my opening remarks and explanation of the process, we do anticipate having and already have a little additional time during this hearing. So if you are someone who did not already register to comment, then you are able to raise your virtual hand to let us know that you'd like us, if we can, to fit in your comment as we have time during this hearing. So you're welcome to do that. The next person who's taken advantage of that opportunity is Michelle Mackey. And Michelle, per Jeaneanne's request right now, please start by not only stating your name and affiliation, but also spelling your name as well, and then proceed to your comment. You'll have five minutes.

Michelle Mackey: Hi there. Thanks for allowing me to speak. My name is Michelle Mackey. That's M-I-C-H-E-L-L-E M-A-C-K-E-Y. And I am just representing myself as a member of the public. I don't have as much a comment as I do questions because I'm still kind of developing an understanding of how Florida's control will affect regional areas. So I'm curious if anyone can break down how Florida's control will affect smaller scale neighborhoods that are closest to the wetlands, like Naples, for example. And I'm curious if anyone can provide examples of ways in which Florida has been deficient in protecting cultural resources. That was mentioned before. So yeah, I just really had questions.

Jeaneanne Gettle: Right. So Ms. Mackey, this is a public hearing, and we are not in-- we're not in a position to really provide explanations and responses. I encourage you to go to the Federal Register to read about the assumption process and also to EPA's website, where we talk about the assumption process. What I can tell you is that wetlands permits go down to the local level, and so they do impact where wetlands are present, and that there are a number of nuances to that that you should look at the Federal Register and look at the application submitted by the State of Florida. With regard to cultural resources, I would refer you back to the State of Florida and to their State Historic Preservation Office for that question.

Michelle Mackey: Great. Thank you so much.

Jan Connery: Okay. Thank you. So yeah. So we have a little additional time as well, and we are still ahead of schedule. I see that more folks have raised their virtual hand, so we will go to the next. And the next person who's raised their hand is John Goolsby. Meredith, would you please unmute John's line?

Meredith Outterson: Yes. John, you're unmuted now, so please, you can go ahead and unmute on your side and provide your comment to EPA.

Jan Connery: And please, John, start by stating and spelling your name and let us know your affiliation, and then you'll have five minutes for your comment. Okay. We're not able to hear John. Are you muted at your end, John? Okay. Well, we're not--

John Goolsby: I'm sorry. Let me try that.

Jan Connery: Okay. Now we can hear you just fine.

John Goolsby: It's a different unmuting button. Yeah. This is John Goolsby. It's G-O-O-L-S-B-Y. And I am a environmental consultant in Florida, and I've been doing so for 40-plus years and was a former water management district regulator. I support the assumption request, and the DEP and water management districts appear to be well equipped to assume the Corps permitting program. And I assume that Florida will sufficiently fund this effort as needed as the program would be implemented, and they would understand what the associated costs would be. Florida already protects its waters and wetlands and can easily assume the Corps program without additional adverse effects to the wetlands. We do not need the additional layer of bureaucracy and permanent costs that are now evident. Having state control will likely reduce the review timeframes significantly and benefit Florida businesses and agricultural entities. And thank you very much.

Jeaneanne Gettle: Thank you, Mr. Goolsby. We have no clarifying questions.

Jan Connery: Okay. I just want to circle back and see if Preston may have solved his issues with-- Preston, are you there? If you're muted at your end, please unmute yourself. Okay. All right. Well--

Yeah. And for purposes of people on the phone, do you think that we could have Meredith explain where the buttons are to unmute and to make sure that people are aware of the way they should unmute their phones, just as a review?

Meredith Outterson: Sure.

Jan Connery: Go ahead.

[crosstalk].

Meredith Outterson: Again, so if you're registered to speak or we're calling on you, I will unmute you on our end of the webinar. But you may also be muted on your end if your computer is muted as a whole. So on your computer itself, there's a mute and unmute button on your keyboard. It's usually in the upper right-hand corner of your keyboard. So you could try there. If we can't hear you as you're speaking, you may be fully muted on your end. And if you're on the phone, there are buttons you press to unmute, which I believe is #6. Oh, it looks like we might have Preston now. Preston, go ahead.

Jan Connery: We're still not--

Meredith Outterson: Preston, you're showing as green audio now, but we're still not hearing you. Are you speaking? Could you speak up into the microphone?

Maybe you need to increase the volume or something.

So Preston, I'll send you a chat to try to help you resolve this issue. We do want to take your comment.

Jan Connery: Okay. All right. Well, again, we are still ahead of schedule, so we do have another person who's raised their virtual hand. That is Ed Thomas. So Meredith, if you would unmute Ed's line, please. And Ed, you're going to start by stating and spelling your name and also providing your affiliation, and then you'll have up to five minutes. Please go ahead.

Ed Thomas: Okay. Can you hear me?

Jan Connery: Yeah.

We can hear you just fine.

Ed Thomas: Can you hear me?

Jan Connery: Yep.

Ed Thomas: Okay. Awesome. Awesome. Awesome. So Ed Thomas. It's E-D, and then Thomas, T-H-O-M-A-S. I'm with The Fertilizer Institute, and we represent the nation's manufacturers, retailers, and wholesalers of fertilizers. So I'd like to state for the record today that fertilizer is a key ingredient for growing food needed to feed the world's burgeoning population. The United States is among the world's largest producers of nitrogen-based fertilizer and phosphate. The fertilizer industry is responsible for more than 30,000 jobs and more than $8 billion in economic activity in the State of Florida alone. TFI and its members have a strong interest concerning regulatory and permitting requirements at the federal and state level [inaudible] in a way that cannot hinder economic growth while continuing to protect our environment. Clean Water Act Section 404 authorizes the Secretary of the Army acting through the Chief of Engineers to issue permits for discharge of dredge of fill material in navigable waters. Under Section 404(g) of the Clean Water Act, the state can seek to obtain authority to administer its own permit program or discharge of dredge or fill materials in navigable waters within its jurisdiction. If the EPA Administrator determines, pursuant to Section 404(h)(2)(A) of the Clean Water Act, that the state has the required authority to issue permits [inaudible] program, then the administrator is required to approve the state's assumption of the program.

TFI is in support of Florida's request and believes the EPA has provided for the record-- the record shows that the State of Florida has fully satisfied the statutory requirement to warrant transfer of the Section 404 dredge and fill permit program from the US Army Corps of Engineers to the state. The Florida DEP already operates the

Environmental Resources Permit Program to regulate the disposal of dredge or fill material in state waters pursuant to state law. As outlined in the memorandum of agreement between the Florida DEP and the EPA, the state's assumption of the Section 404 permit program will not undermine existing environmental protections or EPA oversight of the state's permit program. However, transferring the Section 404 permit program to the State of Florida will lead to greater efficiency and streamlined procedures where a single-state permit would be able to satisfy both federal and state requirements. This would provide permit applicants greater certainty, prevent conflicts, and avoid unnecessary delays and expenses that result from the current dual-permit program.

So although we do have some concerns with EPA's decision to change its longstanding interpretation of the applicability of the Section 7 Consultation Process to its decisions whether to approve a state assumption request, TFI appreciates that EPA engaged the public and undertook a notice and comment process before making change. TFI also notes the outcome of this program would provide liability protection against any [inaudible] that would result in the Section 404 permit issued by the state, although it remains to be seen whether a programmatic review would be able to [inaudible] impacts that may result in the state's assumption of the state 404 permit program. TFI supports EPA's goal of providing certainty and a regulated community through programmatic biological opinions and incidental take statements. For the reasons stated in this public comment period, we support Florida's request to assume the Clean Water Act Section 404 permit program. Thank you.

[crosstalk].

Jeaneanne Gettle: We have no clarifying questions.

Jan Connery: Okay. Great. Well, thanks very much, Ed. So we are a little bit ahead of schedule. So as mentioned, I think we're going to take a short break so that we realign and that the next group of speakers will start at 10:15. So what we're going to do is--

Meredith Outterson: So, Jan, I think we've resolved Preston's audio issues, so we're going to-- let's try him one more time.

Jan Connery: Oh, okay. We do have Preston. Well, that's terrific. Okay. Let's take Preston, and then we'll take a briefer break. Preston, please go ahead and state your name and affiliation and then comment. Well, still not hearing Preston, Meredith.

Meredith Outterson: Yeah. Not quite yet. Okay. Preston, we'll keep working.

Jan Connery: All righty. Okay. So we are going to take a break and resume at 10:15, which is in just about 10 minutes. So Meredith, can you please mute everyone until then? And we'll start promptly at 10:15 AM with speaker group number three.

And thanks to everyone who's participated so far.

[silence during the break]

Jan Connery: Hello, everyone. It's 10:15, so we will be resuming the public hearing. This is Jan Connery. I'm the facilitator for this hearing. For the benefit of anyone who is just joining us now, we are taking public commenters in the order that they signed up to comment when they registered. And we are also finding that we have opportunities here and there where we have a little extra time and are able to take additional speakers. In other words, anyone who didn't sign up to comment originally but finds today that they would like to comment period-- if you would like to do that, you can signal that to us by raising your virtual hand using the hand icon, and we'll make a note of that, and we will be happy to fit you in as time allows. So Meredith, are we good to go, good to proceed with everything?

Meredith Outterson: Yes.

Jan Connery: Okay. Excellent. Well, we are now starting speaker group three, and our first speaker here is Marjorie Laurent.

Do we have Mr. Robertson yet?

Meredith Outterson: I am still working with Mr. Robertson, so we will circle back to him once we think we have the audio issues solved.

Jan Connery: Thank you very much.

Okay. Yeah. So we will start with the first speaker in group three. That is Marjorie Laurent. Marjorie, please state your name and affiliation and then begin your comment. You will have five minutes.

Marjorie Laurent: Good morning. Can you hear me?

Jan Connery: Yes. We can hear you just fine.

Marjorie Laurent: All right. My name is Marjorie Laurent, and I am speaking to you today as a private citizen. I'm objecting to the Florida Department of Environmental Protection's proposal to assume jurisdiction under Section 404 of the Clean Water Act for wetland permitting in the waters of the United States. I know as a private citizen how the present FDEP permit process cuts out public scrutiny and allows latitude in self-reporting and omission of responses on permit applications. I have an example. A recently issued FDEP permit for a marina development in Boca Ciega Bay, where I live, is allowed inadequate information, omissions of answers to questions, and inadequate public notice in the process of approval. The rules the FDEP has in place for the type of permit needed for that marina project do not protect the interests of the public but favor the permit applicant. If FDEP is allowed to administer Section 404, federal oversight will be gone. That essential check to balance the interests of the public with the use of our waterways will be disastrous. The FDEP does not have the resources to undertake this massive permitting responsibility. The FDEP does not have the intention to allocate any of the new funding resources required or responsible permitting processes. The state merely wants to streamline a process specifically put in place to protect our valuable natural resources. This streamlining will significantly weaken the process.

It's important to note that the FDEP is a permitting agency, not an environmental protection agency. FDEP actively looks for ways to help those seeking permits to be successful in obtaining those permits because it's bias is inherent in the permit-issuing process. Complying with state and federal regulations becomes vitally important to the interests of the public and to balance that with the interests or the rights of appropriate equal use of Florida's waters. This makes the FDEP's plan to take over Section 404 a conflict of interest that would be a disservice to the public. Section 404 requires permits to be applied for the use and discharge of dredged and fill materials into the waters of the United States, including wetlands. Florida has particularly fragile and critical areas that are regulated by 404 and which require the highest level of review and scrutiny. Currently, federal Section 404 permits and FDEP environmental resource permits overlap, and they must be obtained in cases where the impacts rise above the regulatory thresholds in federal waters. This additional insight provided by the federal government and agency expertise in this area is critical to adequate protection of the Florida waterways.

If FDEP takes over this process, it will eliminate the original additional scrutiny of federal laws that apply to federal permit actions. For instance, under the FDEP's proposed rules, there are no specifications for process or procedures to assure compliance with Section 7 of the Endangered Species mandates, assuring the protection of the many listed species which live in Florida's water bodies to deleterious actions. Additionally, the requirements for federal agencies to prepare extensive environmental impact statements for a major federal action significantly affecting the quality of the human environment would no longer be required as there are no state laws requiring such a crucial review by the FDEP. I would strongly urge you to disapprove the FDEP's request to assume the administration of this Section 404 of the Clean Water Act.

[silence]

[crosstalk]. Jeaneanne Gettle: We have no clarifying questions.

Thank you.

Jan Connery: Great. Okay. So our next speaker, Christian Wagley, had let us know just prior to this hearing that they were not going to make a comment. So we're going to take the next three speakers, who I understand are all with us. So we'll go next to Lance Pierce. Lance, if you would please state your name and affiliation and then begin your comment. You will have five minutes. Meredith--

Meredith Outterson: Lance, you've been unmuted, so please go ahead and provide your comment.

Jan Connery: Or check if you are muted at your end, Lance, because we're still not able to hear you. Is there any way in which you have muted yourself and need to unmute?

Meredith Outterson: Still not hearing you, Lance. I can send you a chat message and try to help you resolve the issue.

Jan Connery: Okay. Great. So yeah, Meredith will work with you, Lance, to get that resolved. We will go then--

Meredith Outterson: We should have Preston on the line now. We think the issue is resolved there.

Jan Connery: Oh, fantastic. Okay. Let's go back to Preston then. And Preston was in an earlier group of speakers there. There is Preston. Okay. Preston, glad that we could get you connected. Please start by stating your name and affiliation and then proceed with your comment. You'll have five minutes.

Preston Robertson: Thank you. Preston Robertson, Florida Wildlife Federation. And can you hear me?

Jan Connery: Yes. We can hear you just fine now.

Preston Robertson: Hey. Thank you for your persistence. The Wildlife Federation is a statewide nonpartisan conservation organization. And I'd like to thank y'all first of all for-- at the beginning of this talk, you very correctly said that water is the economic and environmental lifeblood of this state, probably more so than any other state in the union. And the Federation really feels we need as much protection as we can over this vital resource. Now, we do know and have some problems with the application itself that EPA put-- sorry, the DEP put forth. It doesn't list the exact waters that are going to be impacted, nor does it fully explain how endangered species are going to be protected. We have more listed species in this state because we're subtropical, at least in the southern part than any other state in the continental US. And so it's critical that these questions be answered.

The other thing I wanted to bring forth is there have been folks talking about how regulation needs to be streamlined. To me that means an elimination of boxes that need to be checked to ensure that this resource is protected. We all need to keep in mind that this is a public resource. I mean, our potable water and our recharge areas are critical for life in this state, and not just life for us but for all of our wildlife that makes the state special. They proceeded with rulemaking even though there was strong opposition to this effort. And I fully agree with the previous speakers that have said we're in an economic downturn here because of the COVID pandemic, and it just seems somewhat odd that we are pursuing what more than likely would cost a tremendous amount of tax dollars to change a system that is presently working to provide the most protection to our water resources. I would also ask - and I'm sure you have - to just look at DEP's website about the impaired water bodies in this state. They have a very difficult job. We have 22 million people in this state, 1,000 people coming in every day, and every single one of those folks has an impact on our water quality and quantity. But the impaired water bodies list on the website is extensive, and they have been impaired for many, many years. So we simply don't believe that for this very critical issue, DEP has the resources staff-wise or is ensured of the financial resources to actually conduct this program to the benefit of the public and of this public resource. Thank you.

Jeaneanne Gettle: Thank you, Mr. Robertson. We have no clarifying questions. And I appreciate your patience in working through the audio issue. Thank you.

Jan Connery: Okay. So we will now go back to our speaker list. We are in speaker group three, and our next speaker is Lance. Now, Meredith, have you been able to-- oh, no. Okay. I see. Right. We're going to go to Eric first. Meredith is still working with Lance. So Eric, would you please begin by stating your name and affiliation? And then you will have five minutes for your comment. Meredith, is Eric unmuted?

Meredith Outterson: Yes. Yes. It looks like he--

Eric Hughes: Yes. Yes. Can you hear me?

Jan Connery: Yes.

Yes. We can hear you now very well.

Eric Hughes: Thank you very much. My name is Eric Hughes, and I am a private citizen. I have 37 years of career with the EPA and Wetlands Protection. My wife and I had lived in-- I'm getting feedback here, but I'm going to try to get through. We live in [inaudible], north of Jacksonville. We've lived here for 24 years. I want to thank EPA Region 4 for putting on these virtual public hearings. Okay. I began working for EPA in the wetlands program in 1979. That would have been the third year of Jimmy Carter's administration. I've worked wetlands regulatory all over the State of Florida for many, many years. For the first 17, working out of Atlanta, then coming down to Jacksonville, being co-located with the Jacksonville District Corps of Engineers as the EPA liaison to the Everglades project, working closely with the water management districts and DEP and continuing to work 404 regulatory. I'm proud to say that I am the recipient of three EPA superior performance awards, one silver medal and two bronze medals, also two Corps of Engineers command awards medals for my work with the other agencies. So I've been there, done that, folks. Also, in 1993, '94, when I was in Atlanta, we did issue and I helped administer a $300,000 grant to DEP for them to do a detailed evaluation of exactly what we're talking about today and wisely decided not to move forward with that. Okay. I got a lot to get through here.

The Corps of Engineers administers and has administer the program, and they have a district engineer and his staff, and they frankly are much more buffered from political influence than DEP and especially the water management districts. Okay. And I'm not happy to say this, but it is there reality. Okay. And DEP and especially the water management district protecting wetlands doesn't get it done effectively. The applicant is reviewed as the client for the staff people, not the natural environment. Okay. The natural environment routinely is getting the short end of the deal. In a recent September 17th news article in the Florida Phoenix, journalist Craig Pittman interviewed the DEP press secretary, who's claimed that DEP had somewhere in the vicinity of 400 staffers around the state to take this program over. That's a ludicrous statement. Now, this morning, we're hearing Justin Wolfe say it's 200. Is it 400? Is it 200? Is it 80? What is it? Okay.

One of the huge issues with this, if you understand the state wetland program, the ERP program—the Environmental Resource Permitting Program, like 85% of the permitting is done at the water management districts, not DEP. So the question here obviously is if this program is delegated by EPA down to DEP, is DEP going to come back in 18 months or 24 months on bended knee and say, "Oh, we need to delegate the program down to the water management districts"? The water management districts are extremely vulnerable to political influence by the governor's office and most especially by the legislature. Corps of Engineers, Department of Defense, much more buffered, okay, from this political influence. DEP doesn't deny permits; neither do to the water management districts. Look at the statistics. I'd be shocked if they denied more than 1% of permits. That's not a protection.

Okay. A couple other points. I'm running out of time. NEPA compliance. There is no DEP Florida equivalent of NEPA compliance. Endangered Species Act compliance. That's inadequate. I don't have time to talk about this whole idea of lateral retaining versus assumed water. So the states proposing 300 feet lateral. That's based on politics, not science. In 1994, New Jersey agreed to 1,000 feet, so there's no consistency there. And last but not least, and it pains me to say this, the EPA staffing levels in Atlanta are completely insufficient to provide adequate oversight of this delegated program. Thank you. I will be providing written comments.

Jeaneanne Gettle: Thank you, Mr. Hughes. We have no clarifying questions.

Jan Connery: Okay. Well, I'm happy to say that it looks like we are able to take Lance's comment now. So let's give that a shot. Lance, can you give us your name and affiliation and then start your comment?

Lance Pierce: Hey. Good morning. I'm Lance Pierce, the executive director of the Association of Florida Community Developers. We're a statewide association comprised of major community development companies in Florida. Our mission is to provide a leadership role in the creation of quality community development and the formulation of a responsible approach to the planning and development of Florida's future. Preserving Florida's environment and protecting our state natural resources has always been a priority for AFCD and our members who rely a great deal on a strong quality of life that will attract people to live in their mixed use planned community. Our association and our membership unequivocally support DEP's efforts to assume the 404 permitting program in Florida. The Florida Department of Environmental Protection's assumption of the 404 permitting program will provide an effective and efficient planning and policy framework for our members. And in turn, it will encourage and support economic development while retaining Florida's many natural assets for generations to come. Frequent and significant delays

in the processing of Section 404 permit applications at federal level add time and project costs to many of our members' development while doing nothing to protect our state's natural resources.

Because of the impact this process has to many of our members across the state, AFCD has been a willing and committed partner throughout the assumption process and continues to work closely with leaders at FDEP and EPA through the development of this program. We are committed to continue working with our state counterpart at DEP, which has decades of experience in processing environmental resource permits and the expertise to process wetlands permits faster while maintaining the same level of environmental protection. We respect and appreciate Secretary Valenstein's efforts to develop a Section 404 wetland permitting program at state level that it's good for both our environment and Florida's regulated community. On behalf of Florida's development community, AFCD appreciates your consideration of our request for assistance on this nationally significant cooperative federalism initiative. We look forward to supporting both EPA and FDEP as the state assumption of Section 404 permitting program advances toward completion. Thank you for your time today and thank you for the hearing.

Jeaneanne Gettle: Thank you, Mr. Pierce. We have no clarifying questions.

Thank you.

Jan Connery: We'll move now to our next speaker, and that is David Childs. David, please say your name and affiliation. Then you'll have five minutes.

David Childs: Hi. Thank you. Good morning. My name is David Childs. Good to see you this morning, Jeaneanne. On behalf of the Environmental Committee of the Florida Electric Power Coordinating Group, or FCG, as it's commonly known, I offer these comments in support of the State of Florida's request to administer the Clean Water Act Section 404 wetland program. By way of background, the FCG is comprised of member investor-owned electric utilities, rural electric cooperatives, and municipal utilities on environmental issues affecting the electric utility industry. So when you flip on a light switch in Florida or your air conditioning provides much-needed relief during our hot summer months down here, think of us. The FCG has a long history of working cooperatively with state and federal regulatory agencies to address initiatives that affect Florida's electric utility industry. This includes the federal NPDES permitting program, which Florida has been successfully administering for decades, as well as the TMDL program in which Florida state-level implementation serves as a model for the rest of the nation on how to restore impaired water bodies.

In addition to being engaged in those programs, the majority of the FCG member utilities hold and must periodically apply for permits issued by the Army Corps of Engineers under the federal Clean Water Act Section 404 program. The FCG strongly supports Florida and EPA's efforts in transitioning the entire 404 program to the state, which we view as a major component of EPA's cooperative federalism initiative. In our experience, at the federal level, high staff turnover, workloads, cumbersome processes, and even the occasional government shutdown lead to delays in processing Section 404 permit applications. Florida's environmental resource permits, which are the state-level equivalent of the federal Section 404 permit, are regularly received months or even years in advance of their federal counterparts. The two permits are often indistinguishable aside from the permit-issuing state.

Through its decades of experience of processing environmental resource permits, Florida developed the resources and expertise to process wetland permits faster while maintaining the same level of environmental protection. DEP is staffed with geologists, hydrologists, engineers, and environmental scientists who are experts in Florida's diverse and unique environmental features. Likewise, DEP's counterparts at the Florida Fish and Wildlife Conservation Commission have extensive understanding of Florida's endangered and threatened species and their habitats. These are dedicated state professionals, and they know Florida well, and they care about its natural resources. Under the leadership of DEP Secretary Valenstein, Florida has now developed a Section 404 wetland permitting program at the state level that carefully and comprehensively protects Florida's natural resources. This program easily meets the Clean Water Act Section 404 assumption criteria. The state's proposed program will boost the protection of Florida's wetlands by having the same statewide team of experts who already administer Florida's state-level wetlands program to also administer the similar federal program. This streamlined approach is good for Florida's environment, and it's good for Florida's regulated community, including the FCG electric utility members. We fully support the

approval of the state's request to assume the program and appreciate your time and consideration of our comments this morning. Thank you.

Jeaneanne Gettle: Thank you, Mr. Childs. We have no clarifying questions.

Jan Connery: Okay. Great. Well, we have reached the end of speaker group four, so we do have a little extra time. There's one person who's raised their hand, and they would like to comment today. That is Jen Lomberk. So Meredith, if you could unmute Jen. And Jen, because you were not preregistered, when you say your name also spell your name, provide your affiliation, and then you will have five minutes to comment.

Jen Lomberk: Good morning. Can you hear me?

Jan Connery: Very well.

Jen Lomberk: Fantastic. My name is Jen Lomberk. The last name is L-O-M-B-E-R-K. I am the Matanzas Riverkeeper. We are a nonprofit advocacy group that works in Saint Augustine, Florida, and I am also the vice chair of the Waterkeepers Florida regional entity, which was introduced earlier by my colleague down with Miami Waterkeeper. Thank you for the opportunity to comment this morning. I would like to note that Waterkeepers Florida and Matanzas Riverkeeper are both opposed to the Department of Environmental Protection's attempts to assume Clean Water Act Section 404 dredge and fill permitting authority from the Army Corps of Engineers for several reasons.

So to begin, Florida's proposed program contains significant gaps. By way of example, the department's assumption application really fails to adequately describe the waters that would be assumed if the application were to be granted, which is obviously critical information. The maps that were provided are low resolution and, frankly, impossible to read with any degree of specificity. The list of waters that was provided was similarly vague, with no specification about where these waterways are located. There are many waterways across the state that share the same name, so listing a waterway like Deep Creek, for example, with no description of location is pretty confusing and insufficient to notify the public and to inform the program. Furthermore, most of the swamps and wetlands located in my watershed in Saint Johns in Flagler County would also lose federal oversight if FDEP assumes 404 authority. The Saint Augustine and Saint Johns County coastal areas already experience regular sunny day flooding and particularly devastating flooding during storm events. Every single week, FDEP approves new environmental resource permits that allow the destruction of wetlands. So we're essentially experiencing a death by a thousand cuts situation here. Losing a few acres of wetlands every week adds up over the course of years, and it's our position that the current system isn't protective enough and this new structure would be even worse.

Additionally, the department lacks the resources, staff, and funding to appropriately implement, operate, and enforce a state 404 program. The other states that have assumed 404 authority have requested significant additional funding and staff to administer the program. And Florida has claimed that it would require no additional resources. As everyone's well aware, over the past decade, FDEP has experienced significant budget and staffing cuts that have left gaping holes in their current water regulatory programs. I would really like to push back against the previous comment touting the success of the state's TMDL and NPDES programs. But by way of example, with regard to the water quality standards program, there are sites across my watershed in Northeast Florida that are not meeting water quality standards, that have not been regularly tested in the past decade. There are water body segments in my watershed that have been impaired for years for which no TMDL or BMAP has been developed because that program is so far behind schedule. In fact, there are almost 30 impaired WBIDs within the watershed that I work in, and only one has a TMDL, and that one still doesn't even have a BMAP.

So at the statewide level, there are 4,209 water body segments that have been assessed by FDEP, and only 1,451 are designated as category two or attaining some designated use. So to simplify that, only roughly one-third of water body segments statewide are actually attaining water quality standards. Of the 1,724 unique impairments on the 2020 FDEP comprehensive verified list, 65% of those impairments have occurred in the past eight years. So this suggests a trend that water bodies are becoming impaired faster than the current TMDL program is able to improve the water quality standards-- the water quality in order to attain those standards. With respect to the NPDES program, an independent study about a decade ago illustrated that the states stormwater design standards are really falling short of meeting the pollution reduction goals outlined in the rule, which has contributed to the rampant nutrient pollution that we have right now. So I would respectfully request that FDEP utilize any additional

resource capacity to address the deficits in their current programs rather than attempting to take on this new program. The additional burden of the 404 program would further exacerbate the already stressed programs that they administer, and our wetlands really can't afford to suffer any more than they already are. Thank you so much for the opportunity to comment.

Jeaneanne Gettle: Thank you very much, Ms. Lomberk. We have no clarifying questions.

Jan Connery: Okay. Well, we are pretty much exactly on time right now with respect to the start of the next speaker group. But that said, so far we just have one person on. Let's move to the next speaker group. Oh, okay. So you can see that is Jeff Shapiro. So we are going to start with Jeff. We're going to keep an eye on whether we see the other four. But to the extent that we don't, when Jeff is done, we have a few folks here, three of the four in the final speaker group. So we will be taking those folks early if we don't see the others join us from speaker group four. Just a heads-up to all of you who are here from group five. So Jeffrey, please start by saying your name and affiliation, and then you'll have five minutes.

And Jeff-- okay.

Jeffrey Shapiro: Hello. Can you hear me?

Jan Connery: Yes. We can. Thank you.

Jeffrey Shapiro: Yes. My name is Jeffrey Shapiro, J-E-F-F-R-E-Y S-H-A-P-I-R-O, speaking as a private citizen. I simply want to state that I oppose the state's application permit process. I believe that the process will be purely administrative. The water management district was decimated during the previous eight years of the previous administration. So that's all I had to say. Thank you very much.

Jan Connery: Okay. Thank you.

Jeaneanne Gettle: Thank you, Mr. Shapiro. We have no clarifying questions.

Jan Connery: Okay. So at this point, we are going to move down to the folks who are here from the next speaker group, meanwhile keeping an eye out for anyone else and fold them in as they get here. So we are going down to-- Gabriel will be our next speaker. Gabriel, Meredith, will unmute you. Then please say your name and affiliation, and you'll have five minutes for your comment.

Meredith Outterson: And Gabriel, it looks like you're still muted on your end, so please try pressing the unmute button on your computer.

Gabriel Almedo: Here we go. Hello. My name is Gabriel Almedo. That's spelled A-L-M-E-D-O, Almedo. I am a born and raised Florida native, and I'm representing myself. As I just said, I was born and raised right here in Florida, and I've lived in this state throughout my entire life. And I've had the privilege to experience Florida's wetlands firsthand, and I've seen the many examples of ecological destruction, as recently with Biscayne Bay, where we've seen many fish dying, and we have lost around 90% of our seagrass beds. So when I heard that the EPA plans to give our state control of the Clean Water program, this has me concerned as a citizen of the State of Florida. Hold on. Give me a minute. Our wetlands not only provide-- okay. Giving our state control of critical wetlands is a very scary thought, and we could potentially lose these wetlands to development. That means we would lose land that provides critical habitat for many of our state's threatened and endangered species, like our state animal, the Florida panther. And we would also lose land that is used by the citizens for outdoor recreation. And as some speakers here mentioned, our ecotourism produced over billions and billions of dollars in revenue, and in my opinion, our state cannot handle any more infrastructure. We have built too much as it is. And as Floridians, it is our job to preserve many of Florida's natural beauty as we possibly can to ensure that future generations can enjoy. And I plan to take my future children to witness Florida's natural beauty in person and not show them a picture in a book showing what natural Florida used to look like. So I think the EPA should reject the state's request. Thank you.

Jeaneanne Gettle: Thank you, Mr. Almedo. We have no clarifying questions.

Jan Connery: Okay. We will move to our next speaker, and that is Marilyn Vazquez Almedo. Marilyn, please say your name and affiliation and then begin your comment.

Marilyn Almedo: Yes. Hi. My name is Marilyn Vazquez Almedo. I'm speaking on behalf of-- I'm a citizen and I'm just representing myself. Good morning. My name is Marylin Almedo, and I'm a native Floridian. I've lived in various parts of Florida, and I've seen the beauty and uniqueness that the state has to offer. And by the same token, I have seen the urban sprawl take over, the continual construction of more homes, shopping centers, and resorts, traffic congestion, and the making of more highways to address a problem that really has no solution. How can it when lobbyists and developers [inaudible]--

Jan Connery: I'm sorry, Marilyn. We are experiencing some audio issues.

Meredith Outterson: I think I've fixed it now, so you should be able to continue now, Marilyn.

Jan Connery: All right. We apologize. I did stop your time, so let's give it another go.

Marilyn Almedo: That's okay. Okay. The continual construction of more homes, shopping centers, and resorts, traffic congestion, and the making of more highways to address a problem that doesn't really provide a solution. And how can it when lobbyists and developers have gotten their way and continue to build? We're literally bursting at the seams. We've seen the effects of pollution on Biscayne Bay, with dying fish and seagrass beds gone, wildlife and human conflict as we continue to encroach on their habitat, and the effects of climate change and rising sea levels and the effect that this is already having on areas of our state. To think that the state now wants to take over a federal program to issue permits for development on sensitive wetlands is scary. With all the cuts that the state's Department of Environmental Protection has gone through, I do not believe that they are equipped to handle these requests. And with no specific wetlands identified or waterways, it makes me even more suspicious.

This shouldn't be about making money. Development will have a long-lasting effect on our environment and our citizens. We've lost respect for our environment. We're losing our natural history, and we will lose our right to enjoy the wonders of our state then that our tax dollars have maintained not only for our citizens to enjoy but to maintain what is left of the delicate balance that is our ecosystem here in Florida. As the saying goes, insanity is doing the same thing over and over again and expecting different results. While we keep doing the same things, not only the results are the same; they're getting worse. If these sensitive areas are made available for development, the consequences will be long lasting and permanent not only to our environment or wildlife but to us as well. I would like to be able to take my grandchild to see our native Florida, to appreciate what we have and respect it for what it is.

So my question is, when is enough enough? When we have developed everything that we can and see the consequences of this development? When we experience the strain or depletion of our natural resources and quality in life? Lobbyists and developers lining their pockets as well as those who have something to gain because let's not kid ourselves. It happens. The development of these lands will focus on the immediate monetary power and influential gains and not on long-term consequences that development on these lands will have. No respect for environment, wildlife, for the citizens of the state if these lands are developed. So I ask again. When is enough enough? I guess when we have nothing left to build on and created a concrete jungle, when some have decided to eliminate everything that is Florida for their personal gain with no consideration for the consequences on the environment, our wildlife, and our citizens. So I strongly urge that the EPA reject the state's request. Thank you.

Jeaneanne Gettle: Thank you, Ms. Almedo. We have no clarifying questions.

Jan Connery: Good. We will move to our next speaker, and that is Karen Garren. Karen, please begin by saying your name and affiliation, and you'll have five minutes here.

Karen Garren: Good morning, all. My name is Karen Garren. I'm a resident of Gainesville, Alachua County, Florida, home of the University of Florida. I've been a resident of Florida since 1978. My email address is literally "iloveflorida." I'm a wildlife biologist and was formerly an adjunct professor at Santa Fe Community College. My husband, Robert, is a wetland biologist, a superb botanist, and an environmental consultant. He assists property owners in compliance with wetland regulation and protection. He's the one familiar with codes and ordinances, so I won't be citing any. Since the mid-1970s, wetland economic values of filter purification of water, sponge absorption of floodwaters, and recharge of aquifers has been recognized and protected to some extent through regulation of permitted disturbances and development impacts. Florida had established water management districts to review

permitting of water use. The Department of Natural Resources was absorbed into the Department of Environmental Protection.

For the last couple of decades, wetland protection in Florida has been eroded by governing administrations. The permitting process has been, quote, "fast-tracked," unquote, accelerating deadlines for review and decisions. Acreage sites of wetlands to be considered for permitting has been increased. Water management districts staff and scientists have been dismissed or had their opinions stifled. District governing boards have been stacked with development interests. Although, quote, "government in the sunshine," unquote, requires transparency and public comment period, it is all for show. Qualified technical advisers had testimony disqualified. Constitutional amendments protecting natural resources that have been passed by ballot elections have been stalled, subverted, and ignored. Legislation has been passed requiring public opinion statements to come from, quote, "stakeholders," unquote, criteria established by the state. While disturbance of designated wetland soils is regulated, every year, tens of thousands of cypress trees are chipped to be sold as mulch. Florida governing administrations have made a deal with the devil, and the devil is money. One only has to look at Florida's coastal development to recognize the lack of protection for our natural processes and property integrity.

Florida's unique springs ecosystems are nutrient polluted and disappearing due to poorly regulated upland watershed activities, poorly regulated aquifer withdrawal, and outright sale to water bottling companies. Florida's Everglades ecosystems have been decimated by agriculture chewing up lands to the edges of the national park. Little to no consideration is given to connectivity of wildlife habitat, protection of endangered plants and ecosystems with the threats of climate change and sea level rise. Florida's agencies are not qualified or motivated to assume responsibilities for federally regulated natural resources. There is currently insufficient staff to review permitting requests. Compliance of permitting conditions remains poorly monitored and enforced. Wetland buffers are negatively impacted. To assume permitting, budgeting compromises will have to be made in funding education and the health system. The continuation of rampant development is unsustainable. At some point, a compromised economic paradigm must be initiated. This is part of a push to eliminate federal oversight and establish premise of the state's authority, but some issues don't stop at state boundaries. I urge the EPA to deny Florida's request to assume regulation of wetland impacts. And if any Florida elected officials are listening, close the Buckman Canal and remove the dam from the Ocklawaha River. Thank you very much for your time.

Jeaneanne Gettle: Thank you, Ms. Garren. We have no follow-up questions.

Jan Connery: Okay. Well, we are significantly ahead of schedule as four speakers from the group four didn't show up. So we have taken the folks who are present right now. And I do want to remind everyone that because we have extra time, we'd be very happy to add commenters. If you are someone who's joined us recently and hasn't yet heard, you can signal to us that you'd like to make a comment by raising your virtual hand and you'd like to do that, please do that now. This is one of those opportunities where we certainly could take your comment. Any commentaries that we add today during the hearing will follow the same process that you've been observing with other commenters. So, Meredith, I know we had someone who had raised their hand but then lowered it again. Have you been able to check and confirm whether that individual would like to speak?

Meredith Outterson: I have not been able to confirm yet. Let's see.

Jan Connery: Okay. But a hand is raised?

Meredith Outterson: Yes. So Raymond Schnell, let's go to you next.

Jan Connery: Okay. Yes. Raymond Schnell did raise his hand. We've confirmed he'd like to speak. So Raymond, because you are being added today, would you please start by stating and then spelling your name for the record? And then you'll have up to five minutes for your comment.

Raymond Schnell: Yes. Hello. Can you hear me?

Jan Connery: Yes. We can now. Please go ahead.

Raymond Schnell: Hey. My name is Raymond Schnell, S-C-H-N-E-L-L. And I'm speaking to you as a private citizen. I've lived in Miami-Dade County for over 30 years. I've been an active water sportsman for that time. I've seen the quality

of the water in Biscayne Bay and other areas in the Everglades change significantly over that time. I object strongly to the State of Florida taking over this project or the permitting on this. I think if that happens, it will just be an invitation for developers to do whatever they would like to do. And that's all I have to say. Thank you.

Jan Connery: Okay. Thank you very much.

Jeaneanne Gettle: Thank you, Mr. Schnell.

Jan Connery: Meredith, I think a hand may have gotten raised. Can you check for me, please?

Meredith Outterson: Yes. So our next person who raised their hand to speak stand-by is Matthew Schwartz. So Matthew, I'll be unmuting you now.

Jan Connery: Yep. Great. We do have time for Matthew's comment. So yes, Matthew, please go ahead. State and then spell your name for the record, and then you'll have up to five minutes.

Matthew Schwartz: Okay. Thanks. My name is Matthew Schwartz, S-C-H-W-A-R-T-Z, and I'm representing the South Florida Wildlands Association in these comments. I don't have prepared comments because I actually just found out about this meeting very, very recently. And this morning, ironically, I was addressing the final task force meeting of the M-CORES project, and that's a great example, by the way, speaking of moving permitting authority from the federal government to the State of Florida. So let's look at that project as an example. So this is a project that never received any kind of needs analysis, any kind of environmental analysis. It was approved by the Florida state legislature, signed by Governor DeSantis, and then the Florida Department of Transportation assembled three task forces, one for each leg of the project, and that's the Southwest Florida Connector, the Central Florida Turnpike Extension to bring it to the Suncoast, and then another project to run the Suncoast Expressway all the way up to the Florida-Georgia border, about 320 miles of new highway through the entire western part of the state, through wetlands, over streams, rivers, all kinds of places where the Army Corps of Engineers would normally do wetlands permitting.

I'm a little bit amused in a way because when I see people saying, "Well, don't transfer authority to the state. Keep it with the federal government." I've been on the Army Corps' distribution email list for wetland permits that come in, and I can tell you-- I mean, I barely have time-- I don't have time to read them. I said barely. I don't have time to read them. They come in like rain. And I'm listening to some of the comments that some of the people made before I spoke. And it's true what they were saying. Florida has been transformed. In one of the task force meetings, somebody referred to it as Generica. It's not that agencies or developers are trying to kill the state. It's incidental to what they're doing. The destruction, the ecological destruction of wetlands, is incidental to their economic goals of development, and that's a major-- or if not the major industry in Florida is developing. And so I'm sidetracking, but the Army Corps-- I think the only thing the state and-- not the state so much as the developers who want this moved from the feds to the state is they don't like the length of time it takes for the feds to approve a permit. It's not that they don't approve permits. They approve everything.

In fact, I would-- I don't know if you know of any, but I know of barely any Army Corps of Engineers wetlands permits that get denied. They all got approved eventually. But they take time, and the developers don't like that because they have construction costs and equipment and planning, and they want to get their projects going. So they want it moved from the feds to the state to speed up that process. And that's pretty transparent, by the way. It's pretty transparent. The FWC who is asked to consult on a lot of these projects rarely has any comment. Or if they do, it's pretty simple, and they have no teeth anyway. I mean, even if they do make a comment on the state level, it's just advisory. The US Fish and Wildlife Service will usually be brought in on wetlands issues because there's almost always endangered species or threatened species, federally listed species that are being impacted by these wetland development projects. So that triggers consultation between the Army Corps of Engineers and the US Fish and Wildlife Service. The US Fish and Wildlife Service will then dutifully write a biological opinion, which unfortunately, also almost always okays the project. Sometimes they add some mitigation. They add some minimization. They add a little bit of avoidance here and there. But by and large, the projects go through.

So because I'm here talking to the EPA, and you have oversight over a lot of these issues, I guess this is an opportunity to say, well, first of all, don't transfer authority to the state. That's absolutely a no-brainer. We've got to

keep this within the federal government, within a process that at least gives the opportunity, the NEPA process that gives the opportunity for the public to weigh in with comprehensive comments about the impacts of a project before it goes through. So we want it to stay within the federal government, but you as EPA also have a role to play in ensuring that the quality of life in this state - human life, wildlife, the quality of our waters - is protected. So I see my time is running out. Like I said, I didn't have prepared comments, but I hope you take it to some consideration, some of the things I said today. Our state is in bad shape, and it's not getting better. It's deteriorating rapidly. I work mainly with the Florida panther. Nobody will ever get a Nobel Peace Prize for discovering what's causing panthers to go extinct or any of the dozens and dozens of wildlife species. So [crosstalk].

Thank you. Thank you.

Jan Connery: Thank you very much.

Jeaneanne Gettle: Thank you, Mr. Schwartz. We have no clarifying questions.

Jan Connery: Okay. Again, I want to remind everyone that we do have extra time, so if you would like to make a comment, you just need to use the hand symbol to raise your virtual hand to let us know that. Meredith, I don't think we have any additional hands raised right now. Can you confirm that for me, please?

Meredith Outterson: We have one person with their hand raised, Richelle McClain.

Jan Connery: Oh, Richelle McClain. Okay. Very good. Well--

[crosstalk].

Jan Connery: --we certainly have time to pick Richelle now. So Meredith will unmute you, Richelle. And please start by saying and spelling your name for the record, giving us your affiliation, and you will have five minutes for your comment. Okay. Is Richelle unmuted, Meredith?

Meredith Outterson: Yes. You are unmuted, but it looks like you're muted on your side, so if you want to hit the unmute button on your computer, that should-- there you go. Are you speaking? We can't hear you yet. Looks like Richelle is having audio problems. If you're using a headset, you could try unplugging the headset. If not, I can work with you in the chat to help you switch over to the phone call audio, which should help resolve the problem. [crosstalk]--

Jan Connery: Okay. Well, we're still not hearing anything, I guess, Meredith, so you'll need to work with her. And we did have four commenters from group four who we haven't seen yet. Meredith, I want to confirm we still aren't seeing them. Mark, Larry, Richard, and Robert.

Meredith Outterson: Correct. They're still not on the line.

Jan Connery: Okay. Well, then what I suggest we do is we'll take another break so that Meredith can work with the person who would like to speak to get the audio going. It is now 11:13, so let's come back at 11:20. It's going to be a very brief break. That's about eight minutes, so I'm going to put a slide up indicating we'll have a short break. It won't have the time on it, unfortunately, because we didn't realize we were going to break at this time, but we'll be resuming at 11:20 AM Eastern time, and then we will take anyone who has raised their hand. So again, if you'd like to make a comment and you haven't yet raised your hand, please do that. It looks like we're going to have time for that, and we'll take anyone who signed up. We'll take any of our registered speakers who were with us then. And so we'll talk to you again at 11:20 AM.

Jeaneanne Gettle: Oh, Jan, why don't we go ahead and wait till 11:25?

Jan Connery: 11:25? Okay. Right. All right. The break will be-- 11:25, so that would be 11-- I'm sorry. Yeah. 11 minutes break. So we will be back then.

Jeaneanne Gettle: Thank you.

[silence during the break]

Jan Connery: If you're just joining us, we are taking a break until 11:25 AM, and we will resume then.

[silence during the break]

Jan Connery: If you're just joining us, we are taking a short break. The public hearing will resume at 11:25 AM.

[silence during the break]

Jan Connery: Hello, everyone. It's 11:25 AM. So we will resume the public hearing for Florida's request to assume administration of the Clean Water Act Section 404 program. This is Jan Connery at ERG, a contractor to EPA, the facilitator for this hearing. It is 11:25 AM. The hearing will run for another 35 minutes. We have a few speakers who had signed up to comment, and we do not yet see them on the hearing. That means that we do have time to take comments from anyone who would like to make a comment and may not have registered to speak officially. You are welcome to signal that you'd like to make a comment by raising your virtual hand, the hand icon that you see on the dashboard. That way, we'll know you'd like to comment. We'll be taking first anyone who does join us, if they do, and has already registered to speak. But so far, again, not seeing anyone there. For the additional commenters, we'll be taking the folks who raised their hands. We don't see a lot of hands raised at this point, so that offers the opportunity for some of you who've spoken, if there's anything you would like to add to your comment, there may be time for that again, as time allows. Before we end at noon, you're welcome to raise your virtual hand for that purpose as well. But we do have a couple of folks lined out up now who we're going to take. So our first commenter-- and - I'm just going to scroll back so that shows that we are taking comments right now, although it obviously isn't the correct person speaking, but in case anyone joins us. So our next commenter, this is someone who has raised their virtual hand, would like to make a comment now. That's Richelle McClain. Richelle, you're going to be unmuted by Meredith. You should start by stating your name and affiliation, spelling your name for the record, and then begin your comment. And you'll have five minutes.

Richelle McClain: Okay. Thank you. Hello. My name is Richelle McClain. R-I-C-H-E-L-L-E, McClain, M-C-C-L-A-I-N. I am a Florida resident. So I'm representing myself as a citizen. And I'm in school again because of COVID, so I've been working on studying the Everglades. It's been my project as a writer, and I'm very [inaudible] speaking about it and writing about it and understanding it. But what I have come across some of my research is that the scientists and engineers are definitely the ones who know what they're talking about, and they have to convince the politicians and developers to do the right thing. But that said, the laws and the bills for the clean water, the EPA that does look over our environments I believe is very important, and it should stay with the EPA. The Clean Water Act, I guess, Section 404, which I'm pretty new to, is supposed to give control from the federal to the states. And I don't know who would control it at the state level. Maybe the Southwest Florida management or the Army Corps, I'm not sure. But, I mean, the Clean Water Act is the basic structure of regulating discharges into the waters of the United States and regulating quality standards for surface waters. And then that was back in the '40s, I believe, and in 1972 included the wetlands, so that I found in Florida Forever. And I've worked developers here for 20 years, and I do understand all the red tape that they have to go through. And I would like to see personally a lot of conservation land being acquired again by Florida Forever, even restructuring the land development and redistricting some of this land. And of course, restoring the Everglades is a big deal that I would like to see happen and continue happening. And so I would vote no to give the states total control. I think it's a concerted effort between federal and states developer. And so that's what I would like to say today. Thank you very much for your time.

Jeaneanne Gettle: Thank you, Ms. McClain. We have no follow-up questions. Thank you.

Okay. So we do have one other person so far who has raised their hand. That's Eric Hughes. So Eric, state and spell your name, provide your affiliation, and you'll have up to five minutes.

Eric Hughes: Okay. Can you hear me?

Jan Connery: Yes, we can.

Eric Hughes: Okay. Last name is Hughes, H-U-G-H-E-S. First name is Eric, E-R-I-C. Private citizen living in [inaudible], Florida, north of Jacksonville. Thank you for letting me speak additionally. I want to focus on a couple points. There is a difference between the state and the Corps of Engineers' implementation of the two different wetland programs. I

totally understand the comment from Mr. Schwartz in terms of the fact that, yes, in fact, the Corps of Engineers, with input from EPA and the Fish and Wildlife Service, actually doesn't deny very many permits. However, the Corps regulatory process is much more stringent and drives a much harder bargain and focuses much more on reducing wetland impacts of projects, minimization, avoidance. The state program, the ERP, is very good to private mitigation [inaudible]. So basically, there's not a lot of minimization or avoidance. If you're a developer, you've got resources, you get a consultant, they go out, they do a mitigation analysis, and you write a check. You're basically buying your permit.

The other major thing that people need to be aware of - and I think people like myself who've been around notice [inaudible] now - the Corps of Engineers is a military entity, and they in fact are much more buffered from the hardcore influence of the Florida legislature and the governor's office. And then the lobbyists are overrunning and have been overrunning Tallahassee forever. So you get a new district engineer every three years, and that's their command military entity the Corps of Engineers employees, their 404 staffers. Certainly, they've got pressure, but it's nothing compared to what's going on at the water management districts and to a lesser extent, DEP. Okay. Another point I'd like to touch on is the water management district governing boards. These are all political appointees. They totally come down and control the water management district employees. Nothing I want to say. I hold the career Florida DEP and water management staffers in very high regard. I would never say anything really negative about these people. They're very good people. Unfortunately, they're working for a very political management structure. Next comment. The retained versus the assumed waters. I know this is highly technical, and I don't really have time to talk about it, but the state is proposing a 300-foot lateral limit adjacent [inaudible] the navigable waters [inaudible]. ERP is totally arbitrary, and it's totally inconsistent with the last time this determination was made by the State of New Jersey in cooperation with the EPA and the Corps of Engineers, where they at least implemented 1,000 lateral feet. So think about the additional protection of those waters. I think that's really the main points I want to make. Thank you for this opportunity.

Jan Connery: Okay. Thank you.

Jeaneanne Gettle: Thank you, Mr. Hughes. We have no follow-up questions.

Jan Connery: Great. Thank you. We do have someone else who did raise their virtual hand. And again, a reminder, if anyone would like to comment, you're welcome to let us know by raising your virtual hand right now. We do have a few minutes before the end of this hearing at noon. Our next commenter is Bruce Ritchie. Please start by saying and spelling your name, letting us know your affiliation, and then you'll have five minutes.

Bruce Ritchie: I raised my hand by accident and took it back down. Thank you.

Jan Connery: Oh. Okay. Sorry. I didn't see it'd been taken back down. All righty. So I am not seeing any other hands raised right now. And Meredith, I believe you've been checking to see whether any of the folks who have signed up have joined us. Where do we stand with them?

Meredith Outterson: So none of our missing speakers have arrived, but we would love to take their comment if they do, so I will keep checking.

Jan Connery: Okay. Okay. I noticed that someone has asked - they weren't able to join until 15 minutes into the hearing - about a record of the hearing. There is going to be a transcript of the hearing. And, Jeaneanne, that's going to be publicly available, I believe, at some point. Is that correct?

Jeaneanne Gettle: Once we receive the transcript, then anyone who requests it through the Freedom of Information Act will be able to have a copy of the transcript.

Jan Connery: Okay. Okay. So Jeaneanne, we don't have anyone else right now.

Jeaneanne Gettle: So what we will do is we will go to-- we will still be here. We will remain and keep this hearing open until noon, Eastern time. And we will continue to monitor to see if anyone raises their hands and check back with an audio check about every five minutes. For the last five minutes of the hearing, we will open it back up and do some closing remarks. So if you are online and you decide you want to make a comment, you can still do so. You can

send us a chat. You can raise your hand, and we'll see that and come back on and take your comments. Does that work, Jan?

Jan Connery: Sure. And I think we will check again at 11:45, I think, to see if anyone raised their hand, and then at 11:50 and 11:55 we could even take one more person or possibly two if they speak briefly. So at five-minute intervals, on the five minutes, we'll check, and we will resume audio if we see hands raised. Okay.

Jeaneanne Gettle: And I will still be here. I'm just going to turn my camera off.

[silence]

Jan Connery: Hello, everyone. It is 11:45. Yes.

Jeaneanne Gettle: I just need to make one clarification before we go on. I wanted to let the participants know that with regard to the transcripts, we will also place those transcript in the public record. So it would be available through the public record as well. But it is also available through a request under the Freedom of Information Act. Thank you.

Jan Connery: All right. Thanks so much for clarifying that, Jeaneanne. So we are resuming the public hearing, as noted a few minutes ago. We have invited anyone who is joining us. If you'd like to comment, we have a little bit of extra time before we end at noon, but we'd love to fit you in if we could. You can signal that to us by raising your virtual hand. And that would include people who've already commented, if they would like to add to what they had said. You may raise your hand. So as time allows, we will take you. And we do have one person who's taken us up on that offer. So we'll go again to Eric Hughes. You will again have for up to five minutes. Eric, please remind us of your name and affiliation. I don't think you need to spell your name again for us. I think we're all set there. Meredith, is Eric's microphone unmuted?

Meredith Outterson: Yes. Now it should be. Here we go.

Eric Hughes: All right. Can you hear me?

Jan Connery: Yes. We can hear you just fine.

Eric Hughes: Yes. I'm a private citizen. I'm a retired EPA Region 4 wetlands employee, 37 years. I've retired in December of 2016.

Jan Connery: And your name?

Eric Hughes: Again, my last name is Hughes. First name is Eric. And I want to thank you for providing me this opportunity for additional comment, and I will be providing written comments and [inaudible]. This last topic pains me, but I think it's important that transparency is very important here. So EPA is supposed to provide meaningful oversight to any delegated 404 program. So what's the staffing level in EPA Region 4 in the wetlands program. Now, I've worked in that program for well over 30 years. Okay. I think the maximum number of people that we had reviewing the Corps of Engineers' public notices to the 404 permits maximum was four. I think we've always had one or maybe one and a half persons doing enforcement for the entire State of Florida. Now, they were basically focusing on the really bad cases that the Corps of Engineers referred to us. These people are working really hard. So the question, which is an uncomfortable question, especially in this format, how in the world is with that staffing level EPA going to do a serious job, a legitimate job, a meaningful job of overseeing the delegated program? What level of commitment is the EPA Region 4 Administrator going to provide anybody as to whether there's going to be a substantial increase in EPA staffing for the 404 program in Atlanta to actually provide meaningful oversight? I don't feel good talking about this, but it's the truth. That's the level of staffing, and there's a huge difference between providing written comments to the Corps of Engineers employees on focused large 404 projects versus being responsible for overseeing an entire permit program by the State of Florida, which is probably going to be - I have no idea - 1,000, 1,500 permit decisions a year? We have to be transparent about this. Thank you for providing me this opportunity.

Jeaneanne Gettle: Thank you, Mr. Hughes. We don't have any follow-up questions. Thank you.

Jan Connery: Okay. Well, I see that Richelle McClain has raised her hand. So Richelle, we'd be happy to give you-- I'm sorry. Bruce Ritchie. I think Bruce Ritchie is next and then Richelle. Oh, Bruce.

Meredith Outterson: So Jan, I checked with Bruce. He says his hand keeps accidentally getting raised, but he doesn't want to comment.

Jan Connery: Oh. Okay. All right. Okay. So Richelle, we'd be happy to give you some more time. Again, please start with your name and affiliation. You don't need to spell it again for us. But then you'll have five minutes.

Richelle McClain: Hi. I'm sorry. I just wanted to say-- my name is Richelle McClain. And in light of Eric Hughes's statement there, which I had a feeling that that was like that-- but I just wanted to say I don't understand both of the laws enough to be able to vote yay or nay on this. But I did want to get my voice out there because I do love the Everglades so much. There is no place on earth like the Everglades. And I do want to be part of the restoration project. So with that said, I just wanted to-- I just wanted to say that just for the record. Thank you very much.

Jan Connery: And your affiliation again, Richelle, please?

Richelle McClain: I am a citizen, a Florida resident.

Jan Connery: Right. Okay. Thank you. Yep.

Jeaneanne Gettle: Thank you, Ms. McClain.

Jan Connery: Thank you.

Okay. So I'm not seeing other hands raised. And Meredith, we don't have any of the folks who haven't yet commented but had signed up, so were on the list. I don't believe we have any of those with us right now.

Meredith Outterson: Correct.

Jan Connery: But we'd go to them if we did. So, Jeaneanne, it's 11:51 right now. We have nine minutes remaining.

Jeaneanne Gettle: Right. We will keep the hearing open for the next nine minutes or eight minutes at this point in time. If anyone wants to make a comment, you're welcome to do so. I would remind you that in addition to this public hearing, we have another public hearing, October 27th, which is from 5:00 PM to 8:00 PM - we'll be using the same format - and that you can also submit written comments to us through November 2nd of 2020. And the location for submission of written comments is included in our Federal Register. We will have a transcript of this public hearing and of the next public hearing that will be available in the docket or through a FOIA request to our agency. And I will just remain on the line until noon. And if someone raises their hand between now and noon, we will take that comment.

Jan Connery: Yes. And I would encourage you to raise it as soon as you can because as we get closer to noon, there'll be less time to comment. And Jeaneanne will have some brief closing remarks just before noon. So we'll be keeping an eye out for raised hands and-- oh, now we have a hand raised. It's Amber Crooks. So Amber, I believe you haven't yet spoken. We'd be very happy to give you some time right now. We're going to start by having you say your name and affiliation and spell your name, please. And then you'll have five minutes to comment.

Amber Crooks: Yes. You can hear me okay?

Jan Connery: Perfectly. Thank you.

Amber Crooks: Yes. I did speak earlier. My name is Amber Crooks. The last name is spelled C-R-O-O-K-S. And I'm with the Conservancy of Southwest Florida. Given the opportunity to add a little bit more to our prior comments-- and we were trying to be mindful of the five-minute cutoff. But we did want to speak a little bit about Endangered Species Act. And we focused on NEPA earlier. But we also have concerns about how the ESA will be complied with. Well, we believe that EPA will need to undergo that plan Section 7 review on the overarching issue of assumption, which may actually be significant enough to warrant an EIS be done by the US Fish and Wildlife Service. We do believe that the one-time programmatic opinion is not an adequate way to meet the requirements of the ESA. As you all know, Florida has several times the amount of listed species than the other two states that currently have assumed the

program. Of course, Florida is being chewed up by development as the third most populous state in the union. A programmatic approach is not going to be able to accurately assess take or ensure no-jeopardy of our cherished wildlife. And that's what I have prepared to say today, and I know that in our formal comments that we will be further articulating many of these concerns, but given the opportunity here to add a little bit more to today's comments, I just wanted to verbalize this. Thank you so much for the extra opportunity to add to our comments.

Jeaneanne Gettle: Thank you, Ms. Crooks. We don't have any questions as a follow-up, but thank you.

Jan Connery: Okay. So right now, not seeing any additional hands. I'll just note we have five minutes left. So there are just a few minutes where we could take a somewhat briefer comment, if anyone would like to raise their hand. We're going to be on the line the next few minutes, but wrapping up about a minute before noon, so.

[silence]

Jeaneanne Gettle: Okay. Jan, if you're ready, I'll go ahead and make our closing statements, if that's--

Jan Connery: Yes. [crosstalk].

Jeaneanne Gettle: [crosstalk] Anyone else with their hand up?

Jan Connery: No, we've got no one else. So I think you're safe to do that. It is almost noon right now, so please go ahead, Jeaneanne.

Jeaneanne Gettle: So again, I'm Jeaneanne Gettle. I'm the director of the Water Division at EPA Region 4, and I would like to thank each of you. And on behalf of Mary Walker, the regional administrator in Region 4, I would like to thank you for your participation in this public hearing. The comments that we received will be considered and evaluated as the EPA makes its final decision on the application received from Florida. As indicated earlier, following the close of the public comment on November 2nd, 2020, EPA will review and consider all comments received during the public comment period, both in writing and from the public hearings, so the oral comments as well. If EPA approves of the state's 404 program, a notice of decision will be published in the Federal Register. EPA will also prepare a responsiveness summary of significant comments received during the comment period and EPA's response to those comments. Additional information regarding these procedures is available by contacting Mr. Kelly Laycock at 404-562-9262 or at 404assumption, all one word, 404assumption-fl@epa.gov. Again, I want to thank you for your participation. We appreciate your interest in this issue, and I hope that you have a good rest of your day. We will now be closing the public hearing.