GULF RESTORATION NETWORK
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UNITED FOR A HEALTHY GULF
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31 July, 2018

Delivered via email to:

Jessica Melkun
jessica.melkun@dep.state.fl.us

RE: **Proposed Rule Development for Ch. 62-331--State Assumption of Federal Section 404**

Dear Ms. Melkun,

I am writing on behalf of Gulf Restoration Network (GRN)[1]. On behalf of our members and supporters in Florida, we respectfully object to the rulemaking 62-331 for State Assumption of Federal Section 404 Dredge and Fill Permitting Authority. State assumption of 404 permit making authority would not be good for Florida's wetlands, waters, communities, or budget. We present the following comments in support of our position.

1. Assumption of the obligations of Section 404 of the Clean Water Act would be costly.

Florida has thousands of acres of wetlands and waterways, and it falls to Section 404 of the Clean Water Act to protect these wetlands and waters. These protections help preserve habitat, protect aquifer and spring recharge zones, and protect communities from flooding. Currently the Jacksonville District of the Army Corps of Engineers (ACOE) issues permits for the dredge and fill of wetlands and waterways in Florida.

Reviewing and issuing these permits is a costly effort, given the uniqueness and volume of wetlands and permits requested. In 2016, the Jacksonville District delivered more than 11,000 actions including 3,646 general permits actions, 267 Letters of No Permit Required and more than 1,000 Standard Permits. This amounts to approximately 44 actions per day.

Even if FDEP were able to streamline this process, this would involve a significant investment of personnel and training.

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[1] GRN is a diverse coalition of individual citizens and local, regional, and national organizations committed to uniting and empowering people to protect and restore the natural resources of the Gulf of Mexico.

In 2015, Jacksonville District's Regulatory program had a budget of $16 million. If FDEP took over the program, they would have to find a comparable amount of funds to assume the program. This need for additional funding is one of the reasons the State did not move forward with an effort to accept delegation of wetland permitting in 2006. There was also concern that the DEP did not have enough staff to monitor compliance with permits and would need help from the ACOE to do so.

Despite the obvious costs to assume this program, FDEP has assured the Florida Senate that "it has the personnel and local expertise to be able to efficiently review and make permit decisions." Given the wetlands program would require approximately 50 actions per day and upwards of $16 million dollars, we don't see how FDEP could come close to achieving the goal of protecting Florida's natural resources.

2. The federal government would not fund a state-based wetlands permitting program under Section 404 of the Clean Water Act.

Currently wetland permitting authority lies primarily under the Army Corps of Engineers. This is federally funded. If FDEP took over this program the State would have to come up with $16 million to administer the program to its full extent. To our knowledge, the State would not be reimbursed by taking over the program, leaving Florida state taxpayers to pick up a multi-million dollar bill.

3. Assumption of Section 404 obligations would cause Florida to lose decades of institutional knowledge.

FDEP has already lost vital institutional knowledge regarding environmental protection, as the staff has shrunk from 3,500 to 2,900 employees over the past 6 years. If FDEP took over this program, it would essentially be removing all of the Jacksonville District staff from the program, losing centuries of combined institutional knowledge about wetland ecology, environmental engineering, water quality, and the regulatory process. Such a loss of knowledge would mean less protection for Florida's wetlands and water bodies.

4. Assumption of the obligations of Section 404 would remove vital checks and balances regarding Florida's environment.

Some might argue that the Florida assumption of the wetland regulatory program would give Florida more say in the permitting process, but as it is right now, Florida already has significant authority in the wetland permitting process. Under Section 401 of the Clean Water Act:

"No license or permit shall be granted until the [state] certification … has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State."

5. FDEP often permits applicants to lead with mitigation plans rather than demonstrate avoidance and minimization from the beginning.

This practice is completely contrary to the first two steps in the mitigation sequence of Federal dredge and fill permitting--avoidance and minimization. Any deemphasis of avoidance and minimization as the highest priority will not provide adequate protection of Florida's wetlands.

6. Threatened and endangered species could receive less protection under the proposed state program.

It is unclear from the proposed rule how impacts to threatened and endangered species will be considered as part of the permitting process. Any proposal that does not involve full consideration of such issues by federal agencies that have traditionally provided such review (Fish and Wildlife Service, National Marine Fisheries Service) will be seen as less protective than the existing federal program and is unacceptable.

Assumption of the responsibilities of wetland permitting is a massive, multi-year process. As shown above it is costly in every way you look at it, from budgeting to staffing. The current system in which state of Florida has a shared rather than sole responsibility is a more efficient use of the FDEP's limited resources of staff and funding.

We urge you to reject this proposed rulemaking as it would not be good for the state's environment, communities, agencies, employees, or budget. However, if Florida decides to embark on the laborious process of seeking delegation, we request that all of the above concerns be addressed in detail. Thank you for considering our comments, and we look forward to a written response from the Department that addresses these concerns.

For a healthy Gulf,
[sent via e-mail]

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