RA BRIEF
FLORIDA ASSUMPTION OF STATE 404 PROGRAM

Date Updated: 02/28/2020 **Date Original Prepared:** 8/8/2018 **Priority:** 3

EPA Goal Supported: Cooperative Federalism, Rule of Law and Process

Issue: 404 Assumption by the State of Florida

Location: State of Florida

Context:

1. Involved Parties: EPA, Corps, USFWS, NMFS, FDEP.
2. Interested parties: Florida Governor, the White House, other states, media, and various stakeholders (mining, developers, Tribes, environmental NGOs).
3. Florida is working on an official request to assume administration of a CWA section 404 program. Before making their request, Florida must pass a rule that will set up the required program elements. The Florida rulemaking timeline and possible legal challenges to that rulemaking, resolution of ESA coordination processes, and finalizing the Corps/FDEP MOA which identifies which waters the state will assume and which waters the Corps will retain, are currently driving the timeline.
4. There are 6 required components of Assumption Package, which are listed below with corresponding estimates (by percentage) of the degree to which EPA staff understands Florida has completed these components.
   - Letter from Governor requesting program approval (0%)
   - Complete program description (30%)
   - Attorney General's statement (80%)
   - EPA/DEP MOA (85%)
   - Corps/DEP MOA (75%)
   - Copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures (70%)

Critical Messages:

1. EPA continues to assist Florida with understanding the federal requirements for 404 assumption and is communicating with them regularly regarding their development of a 404 program.
2. The EPA has not yet seen/reviewed, in final or draft, several components of what Florida will ultimately need to submit as part of a complete assumption package.
3. Key outstanding issues include: Ex. 5 Deliberative Process (DP)

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Considerations:

1. FDEP staff sent EPA staff a copy of their revised proposed rule on 2/12/20. FDEP published Notices of Proposed Rule for the State 404 Program on 2/19/20. The 21-day comment period for the rule will end 3/11/20.
2. FDEP submitted a draft Biological Assessment (BA) to EPA and the Services on 2/25/20 for review. They have asked EPA to submit comments within one month which will be compiled and incorporated by the contractor, GHD.
3.
4. **Ex. 5 Deliberative Process (DP)**
5. EPA staff have an in-person meeting with FDEP 3/4-5/20 to discuss BA, rules, and components of the program description.