August 1, 2017

Lee Forsgren
Deputy Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (4101M)
Washington, DC 20460

Subject: Waters Assumable by States and Tribes under §404 of the Clean Water Act

Dear Deputy Assistant Administrator Forsgren:

The Environmental Council of the States (ECOS), the Association of Clean Water Administrators (ACWA), and the Association of State Wetland Managers (ASWM) sincerely appreciate the support of the U.S. Environmental Protection Agency (EPA) in responding to our joint request that the agency actively engage in a discussion clarifying those waters that are subject to assumption by interested states, and those waters that should be retained by the Corps. Formation of the Assumable Waters Subcommittee under the NACEPT in response to our request initiated significant progress in addressing this issue. The subcommittee was very thorough in its consideration of all information potentially available to guide identification of assumable waters, and we are pleased with the resulting majority recommendation.

As you review the NACEPT report, we request that you adopt the majority recommendations included in the final report and undertake an effort to clarify Section 404(g), either through guidance or rulemaking. You are likely aware that ASWM recommended this step in its response to a request by EPA for comments on Executive Order 13777 on regulatory reform. In addition, we draw your attention to ECOS Resolution #08-3 on State Delegation of the Clean Water Act Section 404 Permit Program to support our joint position on assumption. The language of that resolution says that ECOS:

> "Encourages U.S. EPA and the Corps to continue work with states to bring clarity and certainty to the identification of assumable and non-assumable waters, including the development of clear instruction for states and tribes seeking to assume the 404 program" and "Encourages U.S. EPA and the Corps to adopt the prevailing position of the NACEPT Assumable Waters Subcommittee supporting states' ability to assume the program."

Our state organizations remain strongly committed to assisting EPA in moving forward with development of clarifying language that would enable interested states to assume this authority, as referenced in our joint 2014 letter: https://www.ecos.org/wp-content/uploads/2016/03/Letter-to-EPA-RE-Assumable-Waters-Final-April-30-2014.pdf. Our continuing commitment to this issue reflects our belief that many states already play a major role in implementation of dredge and fill regulations, and that combined state-federal programs provide effective, efficient, resilient, protective, and stable regulation in accordance with Section 404 of the Clean Water Act. We therefore look forward to working with EPA and the Corps to further support state Section 404 programs.

Please contact any of us should you wish to discuss advancement of the majority recommendations of the Assumable Waters subcommittee and related issues. We will continue to track this issue closely and look forward to further dialogue.

Sincerely,

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