

protects the rarest and most at-risk wildlife in our state; the Magnuson-Stevens Act which protects Essential Fish Habitat and our world-class fisheries; the National Environmental Policy Act (“NEPA”) which protects our quality of life and helps ensure prudent decision making; and the National Historic Preservation Act which protects our historical and cultural resources.

Federal oversight of Clean Water Act Section 404 permits has informed, modified, and halted projects that were otherwise greenlighted by FDEP and would have resulted in adverse impacts to Florida’s water resources. Our water resources are vulnerable and deserve additional scrutiny in order to avoid those adverse impacts. Both state and federal levels of review are essential to protecting our resources from local political pressure and special interests, particularly given the demands of our growing population, increasing development, and sprawl. Nearly half of Florida’s wetlands have already been destroyed due to development and sprawl, so maintaining this federal level of review is imperative.

Further, Florida has severely limited access to the courts and the public’s ability to challenge unlawful permits in an independent forum. This creates an additional lack of oversight and accountability that would further undermine public confidence in a state 404 program. Floridians need access to federal courts to ensure accountability in the 404 program and a fair, accessible forum when agencies fall short.

Inadequate State Resources

FDEP lacks the resources, staff, and funding to implement, operate, and enforce a Section 404 program. In a 2005 report, FDEP itself found that assumption would be extremely costly, yet FDEP now does not anticipate requiring additional financial resources to implement this program. This ignores the fact that they would need to train overworked employees to consider and process state-level wetland permits and 404 permits differently. FDEP’s position is unrealistic, especially considering that the state of Florida is facing major budget shortfalls due to the COVID-19 pandemic and a downturn in the economy.

In addition, state assumption of Section 404 authority is not in the public interest because it will create a multi-million-dollar taxpayer burden. The only two states—New Jersey and Michigan—that have assumed Section 404 jurisdiction have spent millions of dollars to develop and operate their programs. Michigan is currently trying to return this burdensome responsibility to the federal government. Florida has considerably more wetlands and higher biodiversity than these states, and as such would require a higher level of expertise, resources, and scrutiny to adequately administer this program.

FDEP’s Failure to Meet Existing Regulatory Demands

FDEP has failed to adequately enforce environmental regulations already within its purview. For example, FDEP is sorely behind in the development of Total Maximum Daily Loads (“TMDLs”) and Basin Management Action Plans (“BMAPs”) for impaired waterbodies across the state, FDEP-established Best Management Practices (“BMPs”) for stormwater and agriculture are not meeting their intended pollution reduction goals, and there are waterbody sites across the state that have not had consistent water quality testing in years.