



NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

Protecting Water Resources in Northwest Florida for More Than 50 Years

**George Roberts, Governing Board Chairman
Northwest Florida Water Management District**

in support of

H.R. 9017, the Restore Florida Water Independence Act of 2026

House Committee on Natural Resources

Subcommittee on Water, Wildlife and Fisheries

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My name is George Roberts, and I am the Governing Board Chairman of the Northwest Florida Water Management District. I am also Co-Owner and Vice-President of Roberts & Roberts, Inc., a construction company, President of Bay County Contractors & Associates, a member of and previous board member of the Florida Transportation Builders Association, and a member of the Asphalt Contractors Association of Florida. I previously served as a member of the Florida State University Panama City Development Board of Directors and the Bay County Chamber of Commerce Board of Directors.

I thank Chair Hageman, Ranking Member Hoyle and members of the committee for having me here to testify in support of H.R. 9017, the Restore Florida Water Independence Act of 2026.

I would especially like to thank Congressman Byron Donalds for sponsoring this bipartisan legislation, Committee Member Webster for cosponsoring the bill, and the members of the Florida delegation who have likewise joined as cosponsors.

I would also like to acknowledge the presence today of the Executive Director for the Northwest Florida Water Management District (District), Lyle Seigler. The District is one of five regional water management districts, and Lyle is responsible for overseeing the management and protection of water resources across a 16-county region with a core mission of ensuring adequate water supply, protecting and improving water quality, flood protection, and protecting the region's natural systems. This encompasses groundwater and surface water resources including springs, rivers, estuaries, bays, wetlands, and lakes. Through its work with local, state, and federal partners, the District plays an important role in protecting Northwest Florida's water resources while supporting the continued welfare and economic vitality of the region.

Section 404 of the Clean Water Act

A Section 404 permit is a federal permit under the Clean Water Act that is required for activities involving the discharge of dredged or fill material into waters of the United States (WOTUS), including

wetlands. WOTUS includes navigable waterways and various components of the surface water tributary system, including lakes and ponds, extending up to small streams, and wetlands that are adjacent to such waters. Discharges of dredged or fill material may occur in connection with development, water resource projects, infrastructure, mining, and other activities. A Section 404 permit is an important environmental safeguard for projects that could alter or affect federally protected waters and wetlands.

The U.S. Army Corps of Engineers (USACE) administers the Section 404 permitting program and reviews proposed projects to evaluate their potential impacts to aquatic resources including rivers, lakes, waterways, and wetlands. The permitting process is intended to ensure that impacts to wetlands and other waters are avoided and minimized to the extent practicable, and that appropriate mitigation is taken to compensate for unavoidable impacts. Depending on the nature and potential impacts of proposed activities, authorization may be provided through an individual permit or a general permit.

Under Section 404(g) of the Clean Water Act, states may assume responsibility for administering the federal Section 404 dredge and fill permitting program for certain waters within their jurisdiction. Michigan and New Jersey are currently the only two states administering an EPA-approved Section 404 program under state assumption (Michigan assumed the program in 1984 and New Jersey in 1994). When a state assumes the program, the state takes over permitting responsibilities for the waters it is authorized to administer, while the USACE retains authority over certain waters that cannot be assumed, including tidal waters and waters used as a means to transport interstate or foreign commerce.

Dredge and Fill Permitting in Florida

In Florida, Section 404 permitting is currently administered by the USACE. Prior to this, and for more than three years, the state of Florida was authorized to administer the federal dredge and fill permitting program under Section 404 of the Clean Water Act for certain waters within the state.

In 2018, Florida began the process of assuming responsibility for the federal dredge and fill permitting program under Section 404 of the Clean Water Act following legislation enacted by the Florida Legislature. The legislation authorized the Florida Department of Environmental Protection (FDEP) to initiate the public rulemaking process necessary to assume the program for certain waters within the state. FDEP completed the rulemaking process on July 21, 2020. The new rules incorporated federal requirements that were not already addressed through Florida's existing Environmental Resource Permitting (ERP) program, and corresponding changes were made to the ERP rules to facilitate the state's assumption of the federal program.

Following completion of the public rulemaking process, Florida submitted its formal assumption package to the U.S. Environmental Protection Agency (EPA) on August 20, 2020. As part of the federal review process, the EPA consulted with the U.S. Fish and Wildlife Service (FWS) under Section 7 of the Endangered Species Act regarding impacts to endangered and threatened species. Because the EPA and FWS would be unable to determine the species or location of specific impacts in perpetuity, they relied on technical assistance, a process that has previously been upheld by the courts. The technical assistance process would allow Florida to submit proposed permits to agencies who would evaluate projects on a case-by-case basis. State 404 general permit notices were sent to the FWS, Florida Fish and Wildlife Conservation Commission (FWC), and applicable Tribal Historic Preservation Offices (THPOs) for review. These coordinating entities could request that a project be elevated to an individual permit review if a project may adversely affect state or federal listed species or historical, cultural or tribal resources. For individual permit applications, notice of application was sent to the FWC, FWS, State Historic Preservation Office, and THPOs for initial review. These coordinating entities could provide comments, recommendations, or request additional information.

At the completion of the federal review process, the EPA approved Florida's assumption of the Section 404 program on December 17, 2020, making Florida the third state in the nation to receive approval to administer the program. The purpose of the state-assumed program was to streamline the permitting process by addressing federal and state requirements through state-issued permits, while providing greater certainty to applicants, conserving regulatory and applicant resources, and giving Florida greater control over the protection and management of its natural resources while continuing to comply with federal law.

Florida's State 404 Program became effective on December 22, 2020. The program was responsible for overseeing permitting for any project proposing dredge or fill activities within state assumed waters. Such projects included, but were not limited to, single family residences; commercial developments; utility projects; environmental restoration and enhancement; linear transportation projects; governmental development; certain agricultural and silvicultural activities; and in-water work within assumed freshwater bodies such as boat ramps, living shorelines and other shoreline stabilization projects. In 2020, at the time of assumption, northwest Florida had approximately 500 pending applications transferred to the state from the USACE.

Over three years later, on February 15, 2024, the U.S. District Court for the District of Columbia vacated the EPA's approval of Florida's authority to issue State 404 Program permits. The court found that the approval relied on a Biological Opinion and Incidental Take Statement that violated the Administrative Procedure Act and the Endangered Species Act. Consequently, all activities under Florida's State 404 Program were transferred back to the USACE which included approximately 250 pending applications in northwest Florida. The decision was subsequently affirmed by the U.S. Court of Appeals for the D.C. Circuit on March 27, 2026.

Florida's Expertise and Program Efficiencies

Florida's state assumption of the 404 program provided a streamlined permitting procedure within which both federal and state requirements were being addressed by state permits. This provided greater certainty to the regulated community, conserved resources of both the applicant and regulator, and afforded the state greater control over its natural resources while complying with federal law. Florida's State 404 Program was a separate program from the ERP program established under Chapter 373, Florida Statutes. Projects within state-assumed waters required an environmental resource permit and a separate State 404 Program authorization. However, approximately 85% of review requirements overlapped between the two programs, eliminating duplicative review and improving efficiency. While the state of Florida had the assumption of the Section 404 program, over 400 issued environmental resource permits also received Section 404 program authorizations in northwest Florida.

Although no longer implementing the federal dredge and fill program, the state of Florida continues to regulate dredge and fill permitting under Chapter 373, Florida Statutes, through its multiple agencies including the FDEP and five water management districts which were established based on natural hydrological basins and major watersheds. Within these agencies are technical staff, abundantly familiar with Florida's unique ecosystems. For example, within the Northwest Florida Water Management District, there are 17 staff with over 115 years of combined experience in ERP and compliance, and there are 15 staff with over 160 years of combined wetland delineation experience, including wetland restoration, preservation and mitigation.

When Florida assumed the Section 404 program, it was able to build upon an existing workforce with extensive knowledge of Florida's unique wetlands, ecosystems, permitting requirements, and compliance processes. At the District, staff brings decades of collective experience administering the District ERP program and protecting the state's wetlands and other resources. These are not new areas of

responsibility for Florida's environmental professionals; they are areas in which the state has developed technical expertise through the decades of administering its own environmental regulatory programs.

Federal regulations exist to protect Florida's ecosystems. This request is focused on restoring state implementation within the existing regulatory framework, not on changing environmental laws or rules or increasing impacts to Florida's habitats. Rather, it is about maintaining strong environmental protection while providing a more efficient, coordinated permitting process that supports Florida's economy. The request is to allow the state of Florida to not only implement the state's regulations to protect wetlands and their ecosystems, but to also responsibly manage and administer the Section 404 dredge and fill permitting program under the Clean Water Act through the same agencies who are already equipped with expert staff intimately familiar with Florida's ecosystems and who have already administered the Section 404 program.

Importance of Ecosystems and Local Reviewers

Florida is growing at an unprecedented rate while also sustaining a large tourism industry. According to the United States Census, the state of Florida grew 8.9% from April 1, 2020 to July 1, 2025, with some of the highest growth rates occurring in northwest Florida. The City of Freeport, which is located in the Florida panhandle, grew 25.6% during this same timeframe. These numbers reflect permanent residents and do not include the significant seasonal population of tourists. The wetlands, native vegetation, and wildlife that thrive in Florida's ecosystems regulated under the Section 404 permitting program support the state's tourism and economic development. Advertisements promoting tourism in Florida usually include highlights of the various unique ecosystems in Florida. In northwest Florida, people are not moving and traveling to the region for theme parks. They are there to enjoy Florida for what it is and should remain – a thriving unique ecosystem with many crystal-clear freshwater springs, lakes, and wetlands scattered throughout.

These unique ecosystems are indispensable to Florida's environmental, agricultural, and municipal interests as well as economic sectors, in addition to those of the nation. For example, tupelo trees are grown naturally in the wet bottomlands, swamps, floodplains, and river basins of the Florida panhandle. These tupelo trees support the bees which pollinate local area crops. However, these same bees are shipped out west each year to pollinate crops in areas of California. Local experts existing within Florida's state agencies are aware of local pristine habitats and understand the importance of protecting these wetlands in Florida while permit reviewers located outside of the state, relying primarily on information reviewed remotely, do not have the same understanding of these unique ecosystems.

In 2024, the USACE outsourced permit application reviews for proposed activities subject to Section 404 of the Clean Water Act to a third-party contractor and began utilizing staff at other USACE Districts while the state of Florida had local hydrologic and hydrogeologic experts already employed that could review and approve or deny applications by conducting on-site field visits to verify application materials. On-site visits by local permit reviewers shorten the review process through field determinations of wetland boundaries and meetings on site with applicants and their consultants. The state of Florida has proven it can implement Section 404 of the Clean Water Act, and its staff are able to learn and apply any new laws and rules enacted in the future.

Financial Impacts

These applications are not limited to private projects. The applications also include public projects which are necessary to support communities throughout Florida. When the program was transferred back to the USACE, public projects that exhibited delays in review included an expansion of a clinic and a school. Delays in permitting cause local governments as well as hospitals and school districts in Florida to

endure progress delays on state and local priorities such as water quality improvements, resilience projects, infrastructure needs, environmental protection, and public safety. Permitting delays not only postpone benefits to residents and businesses but also requires more capital in the form of taxpayer dollars.

Project delays have led to increased costs as the price of iron, steel, cable, concrete, and fuel have risen. However, construction materials are not the only drivers of increased costs. Delays and uncertainty can negatively impact a project by approximately 15-25% through a combination of increased material costs, labor, extended financial overhead, and carrying costs. Extended permitting timelines require additional financing, land holding, legal services, increased interest, bond costs, and can even cause lenders to require additional assurances when approval timelines are uncertain. These delays can create significant economic impacts for the public, governments, and the regulated community.

Below are examples of permitting delays identified by permittees in Bay County, Florida.

- Little Burnt Mill Creek – Phase 1 (subdivision) in Bay County
 - State environmental resource permit issued April 25, 2024
 - USACE permit issued November 20, 2025
 - Difference: 574 days
- Snug Harbor Boat Ramp in Panama City
 - State environmental resource permit issued May 11, 2018
 - USACE permit issued October 25, 2022
 - Difference: 1,628 days
- High Point Boat Ramp in Bay County
 - State environmental resource permit issued November 12, 2024
 - USACE permit issued November 6, 2025
 - Difference: 359 days

Permitting Standards and Mitigation Requirements

To obtain an individual or conceptual environmental resource permit under Florida's state laws, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the project(s) will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters. As part of the conditions for issuance, criteria to be considered include whether the proposed activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats. In Florida, under state requirements, mitigation is an approved measure to offset adverse impacts to wetlands through the creation, maintenance, and use of mitigation banks or offsite regional mitigation. Per Chapter 373, Florida Statutes, permitted mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands which is best accomplished through restoration of ecological communities that were historically present.

Mitigation does not occur on an acre-to-acre offset. Mitigation credits needed depend on the quality and type of the impacted ecosystem. Impacts to pristine wetlands that are considered high quality would require significantly more credits to offset than lower quality wetlands. Consideration of an ecological community's current condition, hydrologic connection, uniqueness, location, and fish and wildlife

utilization are all evaluated to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters.

Not all impacts are permissible. An area where mitigation might be considered is, for example, a 0.02-acre of unavoidable wetland impact necessary to allow for an entryway to a development to meet required transportation lines of sight and other design requirements. The preservation of flora and fauna in this situation may be best accomplished by relocating any threatened or endangered species and purchasing mitigation credits.

One may assume that developments in Florida are not concerned with impacting wetlands since there are mitigation banks to restore and preserve ecosystems; however, the price to purchase mitigation credits can be cost prohibitive. It is more cost-effective to design around and provide buffers to the wetland areas to ensure no impacts rather than pay to mitigate impacts. In fact, in Walton County, Florida the Nokuse Plantation Mitigation Bank charges \$175,000 per credit for Wet Flatwoods/Palustrine Combination Credits.

Conclusion

Florida has demonstrated that state administration of the Section 404 program can deliver greater regulatory efficiency while maintaining strong protection of Florida's aquatic resources. H.R. 9017, the Restore Florida Water Independence Act of 2026, provides an important path toward resolving the federal legal challenge that has prevented Florida from continuing to administer the program approved by the EPA in 2020.

The State of Florida administered this program for over three years from December 22, 2020 to February 15, 2024. During this period, over 400 environmental resource permits were issued in northwest Florida which also received Section 404 program authorizations. Florida demonstrated that state assumption could deliver greater efficiency and lower costs while maintaining strong environmental protections. The program reduced duplicative federal and state review, provided greater certainty and responsiveness to applicants, and allowed permitting decisions to be made by state staff with extensive knowledge of Florida's unique resources.

Restoring Florida's authority would return permitting decisions to the state environmental professionals who are familiar with the state's unique waters, wetlands, and local environmental conditions, reduce duplicative federal and state reviews, and make better use of both applicant and regulatory resources. Florida's prior implementation demonstrated that this approach can provide timely permitting while maintaining federal environmental standards, species protection, and regulatory oversight.

As noted by FDEP, approximately 85% of the review requirements of the State 404 and ERP programs overlap, making coordination between the two programs particularly important. The EPA has recognized that state assumption can streamline permitting, reduce duplication, and allow regulators who are more familiar with local aquatic resources and conditions to administer the program. Restoring Florida's Section 404 authority is therefore not about choosing efficiency over environmental protection, it is about achieving both efficiency and environmental protection through a coordinated program administered by the people who know Florida's environment best.

Thank you, Chair Hageman and members of the committee, for the opportunity to testify today. I also want to thank Congressman Donalds for his leadership and for introducing this legislation to address this important issue.