



WATERS WORKGROUP

ASSUMABLE WATERS SUBCOMMITTEE

MARCH 15, 2016

SUMMARY OF RECOMMENDATIONS

- I. The waters workgroup strongly recommends development by the federal agencies of field level guidance on state 404 Program assumption.

- II. A state or tribe may assume administration of the Section 404 permit program in all waters of the United States except those navigable waters traditionally regulated by the Corps of Engineers under Section 10 of the Rivers and Harbors Act – minus waters regulated on the basis of historical use only – and wetlands adjacent to the Section 10 waters. **The administrative identification of these waters is distinct from the definition of jurisdictional waters.**

SUMMARY OF RECOMMENDATIONS

(continued)

- III. State and federal agencies should be afforded a degree of flexibility in defining the scope of waters to be assumed by the state (and retained by the Corps) to account for distinct state needs. However, guiding principles regarding the extent of assumable waters that can be applied nationally should be included in and serve as the basis for field level guidance.
- IV. The waters workgroup recommends that a uniform national procedure for identification of US Army Corps retained waters be included in field guidance, to include historic and current navigable waters, those susceptible to use, and adjacent wetlands, and provisions for resolving disputes.
- V. In order to provide information for the regulated public as well as regulatory agencies, graphic means (e.g. maps, Geographic Information Systems) should be used to the extent possible in addition to lists of waters to clarify the location of state and federal authority for purposes of Section 404 permitting.

UNRESOLVED QUESTIONS AND CONCERNS

- Definitions of “historically used” that can be applied in a practical manner at field level.
- For purposes of assumption, what is the extent of “navigable waters” in terms of distinguishing between minor/intrastate/recreational use and “highways of commerce”?
- Dispute resolution regarding assumable waters; EPA role and who makes final decision?
- Identification of any special tribal concerns for recommended guidance/procedures (no tribal representative on waters workgroup).