

# Senate Finance Subcommittee

## Clean Water Act Section 404 Assumption

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# Existing Department Primacy Programs

- Safe Drinking Water Act (SDWA)
- Clean Air Act (CAA)
- Resource Conservation and Recovery Act (RCRA)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Clean Water Act (CWA)
  - Section 402 – Point source wastewater discharges



# Section 404 Overview

- Clean Water Act Section 404 regulates discharge of dredged or fill material into Waters of the United States (WOTUS)
- Examples of activities requiring 404 permits
  - Resource development projects
  - Construction of revetments, breakwaters, levees, dams, and weirs
  - Site improvement fill for residential or commercial development
  - Placement of fill materials for roads, airports, or buildings
- Section 404 permits in Alaska are currently issued by the United States Army Corps of Engineers (USACE)



# Existing Authority

In 2013, the 28<sup>th</sup> Alaskan Legislature passed SB 27:

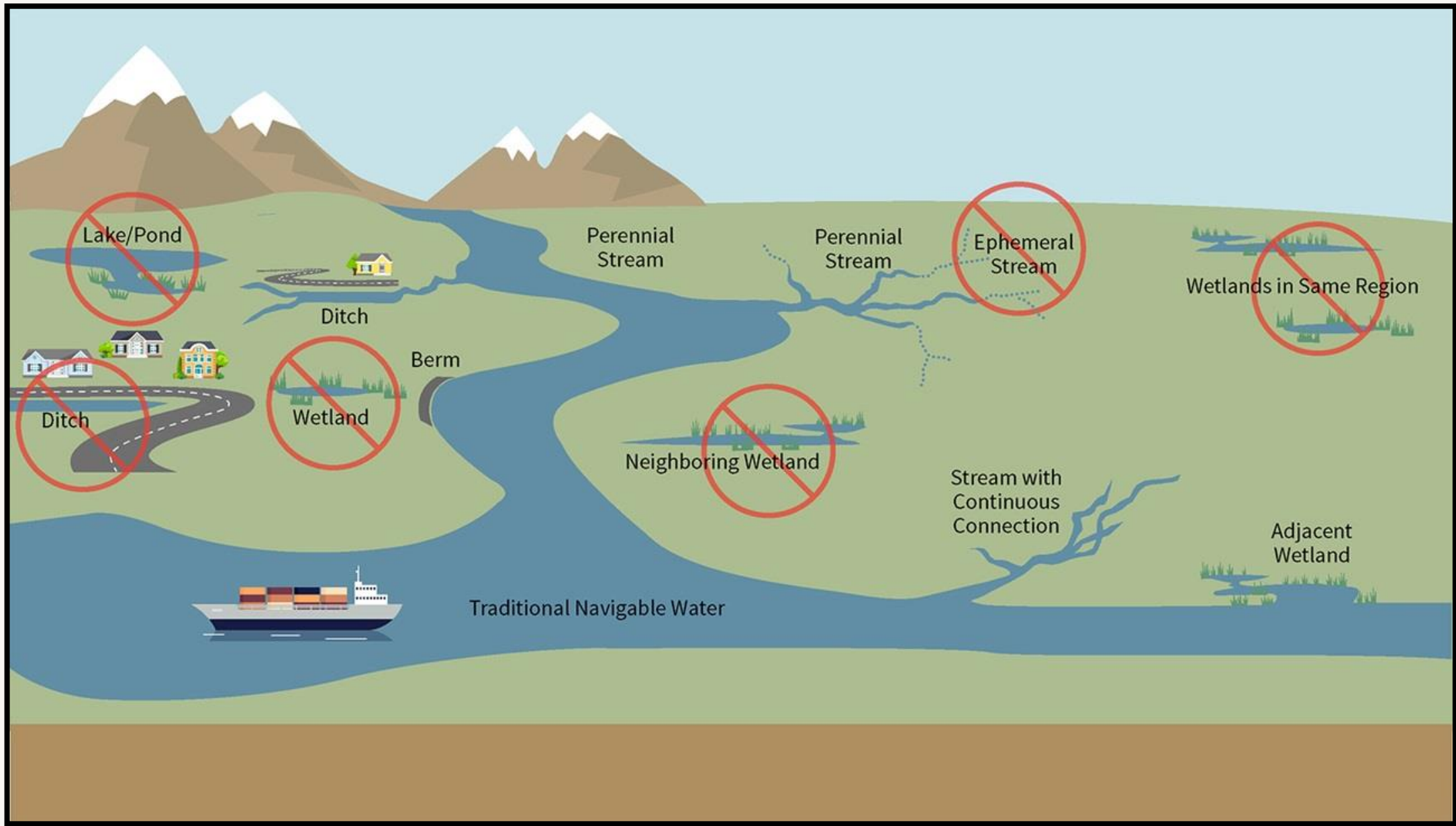
*“The Department of Environmental Conservation...shall...take reasonable steps to assume primacy of the [404] program.”*



# Alaska's Assumable Waters

- States clearly assume non-navigable waters such as wetlands, bogs and marshes
  - 43% of Alaska is delineated as wetlands – 174 million acres
  - Other waters may also be assumable during the assumption application and review process
- Retained WOTUS waters typically include navigable waters the USACE has an obligation to regulate
  - Section 10 of the Rivers and Harbors Act of 1899 gives the USACE authority to regulate construction of structures in navigable waters
  - The USACE also retains 404 authority of discharge of dredged and fill materials in waters subject to the Rivers and Harbors Act





# Assumption Advantages

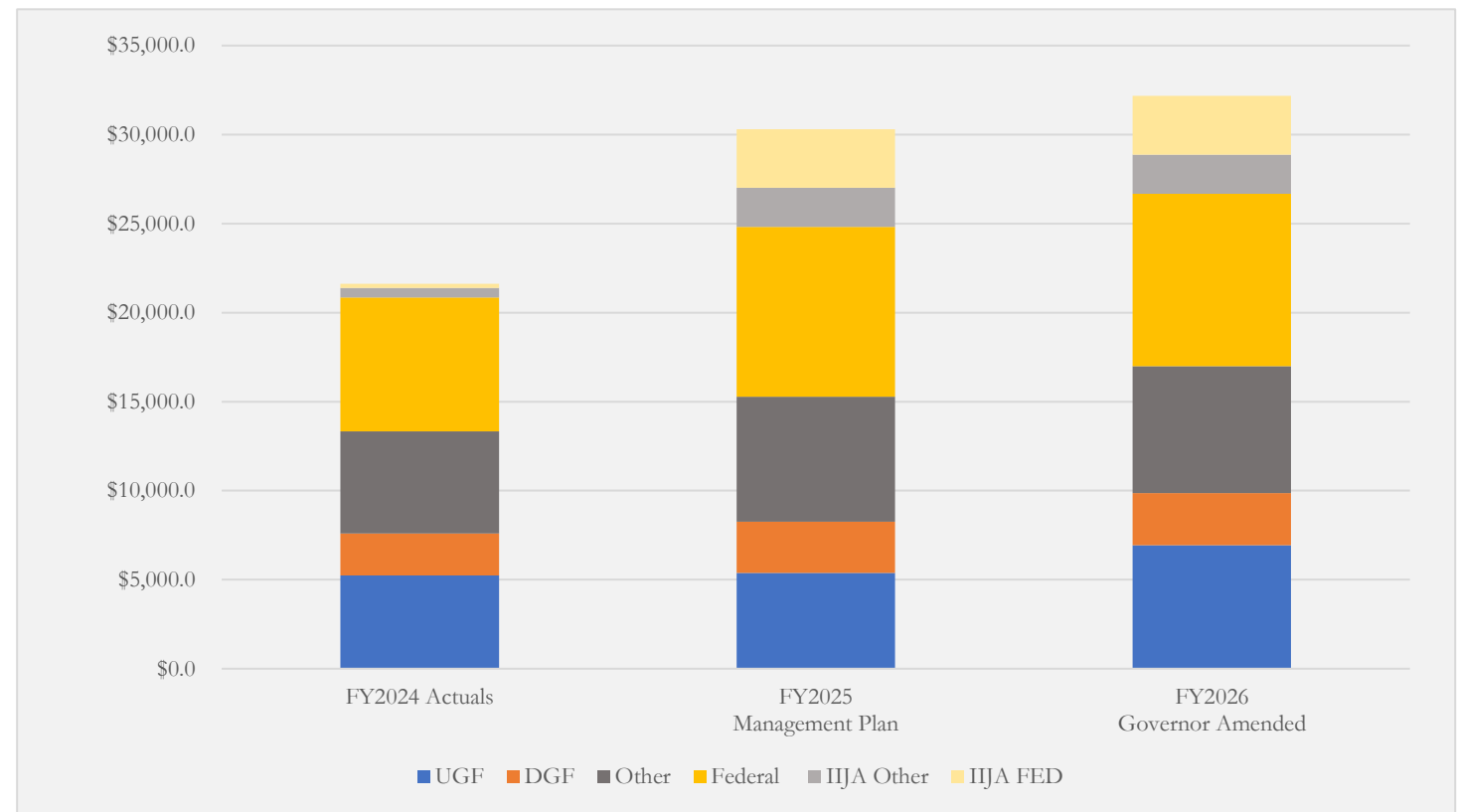
- State government agencies are more accountable and accessible to Alaskans and Legislature
- Eliminates duplicative state and federal permitting requirements
- Agile WOTUS policy development and implementation without unnecessary deference to Lower 48 concerns
- Administrative appeal process and litigation moved into Alaskan courts with better knowledge of Alaska's land concerns
- Implements a program just as stringent as required in Section 404(b)(1)
- Opportunity to develop clear WOTUS guidance for Alaska post *U.S Environmental Protection Agency v. Sackett* ruling
- With resource development projects expected to increase, assumption puts Alaska in driver's seat to implement compensatory mitigation which works for Alaska





# DEC FY2026 Operating Budget:

## Division of Water (in thousands)



		FY2024 Actuals	FY2025 Management Plan	FY2026 Governor Amended	Difference FY2025 and FY2026	% Difference FY2025 and FY2026
UGF		\$5,231.5	\$5,372.4	\$6,927.4	\$1,555.0	28.9%
DGF		\$2,367.4	\$2,878.8	\$2,934.3	\$55.5	1.9%
Other		\$5,725.2	\$7,021.3	\$7,130.0	\$108.7	1.5%
IIJA Other		\$541.7	\$2,197.1	\$2,197.1	\$0.0	0.0%
Federal		\$7,528.0	\$9,536.3	\$9,691.4	\$155.1	1.6%
IIJA FED		\$225.0	\$3,302.5	\$3,302.5	\$0.0	0.0%
<b>Total</b>		<b>\$21,618.8</b>	<b>\$30,308.4</b>	<b>\$32,182.7</b>	<b>\$1,874.3</b>	<b>6.2%</b>





# Questions?



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