

**MEMORANDUM OF AGREEMENT BETWEEN
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE UNITED STATES DEPARTMENT OF THE ARMY**

I. GENERAL

A. Purpose and Authority

(1) Section 404 of the Clean Water Act (CWA), 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material into waters of the United States. The South Atlantic Division of the United States Army Corps of Engineers (Corps), acting through the Jacksonville District, currently administers the Section 404 program in the State of Florida.

(2) Section 404(g) of the CWA, 33 U.S.C. § 1344(g), authorizes states, with approval from the United States Environmental Protection Agency (EPA), to assume authority to administer Section 404 of the CWA over certain waters of the United States. The EPA has promulgated regulations at 40 C.F.R. Part 233 outlining, among other things, its requirements for approving a state program.

(3) The State of Florida (State) is submitting its program for the assumption of the Section 404 program in compliance with the above-cited authorities. This Memorandum of Agreement (hereinafter "Agreement") between the State and the Corps fulfills the requirements of 40 C.F.R. § 233.14.

(4) The Florida Department of Environmental Protection (DEP), pursuant to Part IV of Chapter 373, Florida Statutes, is authorized to issue permits for regulated activities conducted in State regulated waters, including the discharge of dredged and fill material. The Secretary of DEP is given the authority to issue permits pursuant to Part IV of Chapter 373, Florida Statutes, and is the State official charged with administering the State 404 Program when assumed in accordance with 40 C.F.R. Part 233.

B. Effective Date and Revisions

(1) This Agreement shall be executed by DEP and the Corps and shall take effect at the time of EPA approval of the State 404 Program, which shall be the effective date published in the Federal Register.

(2) DEP and the Corps agree to maintain a high level of cooperation and coordination and to work in partnership to assure successful and effective implementation of Section 404 of the CWA.

(3) This Agreement, and procedures established in conformance with it, shall be reviewed periodically, or at least once every twelve months, by DEP and the Corps. Either

party may request in writing an amendment or modification to the Agreement. Amendments and modifications shall be in writing and shall be effective upon the signature of both parties and approval by EPA.

(4) This Agreement, and any amendments and modifications thereto, shall remain in effect until the State 404 Program authorization is modified in a manner that would affect this Agreement or is withdrawn by EPA pursuant to 40 C.F.R. § 233.53(b) or is voluntarily transferred by DEP to the Corps according to the criteria and procedures established in 40 C.F.R. § 233.53(a).

(5) In the event DEP proposes to transfer all or part of the State 404 Program to another State agency in accordance with 40 C.F.R. § 233.16, a new Memorandum of Agreement between the Corps and that State agency will be required.

II. WATERS TO BE RETAINED

TBD.

III. JOINT COORDINATION PROCEDURES

A. DEP and the Corps agree that when an application is received by either party, the application will be screened to determine if the proposed activity will occur within Corps retained waters, as identified in section III, above. The Corps will provide a retained-waters GIS layer to DEP. When a proposed activity falls within the GIS layer, DEP will forward the application to the Corps for a jurisdictional determination and advise the applicant to contact the Corps. Likewise, when a proposed activity falls outside the retained waters as shown in the GIS layer, the Corps will forward the application to DEP and advise the applicant to contact DEP.

B. For applications where both the Corps and DEP have Section 404 permitting authority due to the presence of both retained and assumable waters, the Corps will process the application for the retained waters and DEP will process the application for the assumed waters using the retained-waters GIS layer. DEP and the Corps may pursue joint public noticing or joint processing for such projects.

C. In accordance with Section 10 of the Rivers and Harbors Act (RHA), the Corps has regulatory jurisdiction over all obstructions and alterations of navigable waters of the United States, the construction of any structures in or over navigable waters of the United States, and any work affecting the course, location, condition, or capacity of navigable waters of the United States as defined in 33 C.F.R. Part 329. This includes permit authority under Section 10 of the RHA for those waters based solely on historic use (Section 10 historic waters) (Attachment X). While the Corps retains Section 10 authority over Section 10 historic waters, upon the effective date of this Agreement, the State assumes responsibility for Section 404 authority over Section 10 historic waters, and discharges of dredged or fill material in Section 10 historic waters will require a permit from the Corps and DEP.

D. In areas where DEP has Section 404 permitting authority and the Corps has Section 10 permitting authority, DEP and the Corps agree to establish procedures to inform the public and maximize coordination as practicable. Within five days of receipt of an application under the State 404 Program for work in Section 10 historic waters, DEP agrees to provide the Corps a copy of the application. Additional coordination procedures between the Corps and DEP may include pre-application meetings, field visits, mitigation coordination, and enforcement and compliance coordination.

IV. EXISTING PERMITS AND PENDING PERMIT APPLICATIONS

A. Individual Permits

(1) The time limit for completing work authorized under a Department of the Army individual permit issued prior to the date of assumption for regulated activities in assumable waters (e.g., construction or placement of fill) will remain the expiration date stated in the permit instrument. In the event work is not completed by the expiration date, requests for authorization of uncompleted work shall be made to DEP for evaluation under the State 404 Program after the date of assumption.

(2) Requests for modifications of unexpired permits within assumed waters shall be made to the Corps after the date of assumption. The Corps shall review the request to determine whether the modification is likely to result in a significant increase in scope, in which case the Corps shall transfer the application to DEP for evaluation under the State 404 Program. General and special conditions of Department of the Army permits are effective indefinitely and any request to modify special conditions shall be made to the Corps.

B. General Permits

The time limit for completing the work under a Department of the Army general permit verified prior to the date of assumption for regulated activities in assumable waters will remain the expiration date stated in the permit and regulation. Requests for modifications of work verified under a general permit prior to expiration and after the date of assumption shall be made to DEP for evaluation under the State 404 Program. Work authorized by general permits verified prior to the date of State assumption in assumable waters shall remain in effect for the purposes of Section 404 after State assumption. These verifications shall continue to be effective for the original duration established by the Corps to include twelve months after expiration if work has commenced or is under contract to commence. After assumption, activities previously subject to a general permit and occurring within waters assumed by the State shall require a permit under the State 404 Program.

C. Records Transfer

Upon notification of program approval from EPA, the Corps will transfer to DEP any pending Section 404 program permit application files within the area of State assumed waters including requests for mitigation banks and in lieu fee programs where the mitigation bank, in

lieu fee project, or service area includes State assumed waters. Upon request by DEP, the Corps will provide copies of any permits for purposes of issuing new permits. Transfer methods shall be mutually agreed upon by DEP and the Corps.

V. REVIEW OF APPLICATIONS FOR STATE PROGRAM PERMITS

A. RHA Projects

The Corps reserves the right to review applications for permits to be issued under the State 404 Program for projects which may substantially impair the anchorage and navigation of navigable waters of the United States as defined by the RHA and the Corps' RHA implementing regulations at 33 C.F.R. Part 329, and projects involving discharges which could have an impact upon existing or proposed Corps projects.

B. Federal Projects

In accordance with Section 14 of the RHA (33 U.S.C. Part 408) (Section 408), the Corps has the authority to review requests for modification of Federal projects by non-Federal interests. Within five days of receipt, DEP agrees to provide the Corps a copy of all applications for activities that would modify, alter, or build upon an existing Federal project. Existing Federal projects are identified in Attachment X, which will be updated as necessary. Within five days of receipt from DEP, the Corps will notify DEP if the Corps' permission is required pursuant to Section 408, in which case the State agrees to either delay any final actions until Section 408 permission is granted or include a special condition in the permit requiring Section 408 permission prior to construction.

C. Emergency Permits

In accordance with 40 C.F.R. § 233.22(d), DEP shall contact the Corps to solicit comments pertaining to issuance of an emergency permit as soon as possible after the emergency permit is requested, but no later than the day of issuance of the emergency permit.

VI. COORDINATION OF MITIGATION BANKING

A. Interagency Review Team

DEP and the Corps agree that mitigation banking projects and in lieu fee programs, including service areas, wholly or partially within State assumed waters, shall be subject to review by an Interagency Review Team (IRT), consistent with the 404(b)(1) Guidelines, Subpart J. The IRT for such projects shall be co-chaired by DEP, or its delegate, and the Corps. EPA may participate on the IRT at EPA's discretion.

B. Corps Approval of Mitigation Banks Authorized under State 404 Program

The Corps may sign a mitigation bank or in-lieu fee program instrument approved under the State 404 Program to indicate that the Corps approves the use of the mitigation bank or in-lieu fee program to provide compensatory mitigation, as appropriate, for federally-issued Section 404 permits.

VII. ENFORCEMENT

A. After the date of State assumption, the Corps will continue to perform compliance on all permits, mitigation banks, and in lieu fee projects / programs issued and approved prior to the date of State assumption.

B. The Corps will not be responsible for enforcing against unauthorized discharges of dredged and fill material in violation of the CWA which occur in waters assumed by the State after the effective date of this Agreement.

C. The Corps will retain those ongoing enforcement actions (unauthorized activities and noncompliance with permitted activities) in waters assumed by the State for violations which occurred and have not been resolved prior to the effective date of this Agreement. If there is an unusual circumstance concerning a violation, the parties to this Agreement may discuss the Corps transferring the case to DEP to pursue resolution of a violation. For those instances where the Corps resolves the enforcement action in assumed waters after the date of State assumption, the Corps will provide DEP a copy of the consent decree or settlement agreement. DEP will be responsible for issuing any after-the-fact permit, or any modification of an existing permit with a significant increase in scope for discharges in assumed waters for those cases retained and resolved by the Corps.

VIII. COMMUNICATION BETWEEN PARTIES

A. Communication and record sharing between the parties of this Agreement may be accomplished through electronic means.

B. Following execution of this Agreement, DEP and the Corps will meet to discuss issues related to State assumption. Such meetings will be held on a biweekly basis during the first six months of State assumption in order for the Corps and DEP to ensure effective coordination for those projects involving assumable and retained waters, pending actions transferred to the state, ongoing enforcement actions, and requests for modifications of permits.

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IX. SIGNATURES

Florida Department of Environmental Protection

Date: _____

By: _____

Department of the Army

Date: _____

By: _____

DRAFT

ATTACHMENT (to be referenced in waters to be retained section)

Jacksonville District Navigable Waters Lists

In Florida, Puerto Rico, and the U.S. Virgin Islands, the U.S. Army Corps of Engineers, Jacksonville District, exercises section 10 (of the Rivers and Harbors Act of 1899) regulatory jurisdiction over the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Additionally, all or portions of tributaries to the above waters may also be subject to section 10 authority. However, complete lists of all rivers, streams, creeks, ponds, and lakes subject to Corps section 10 authority are not available. Below are lists of waters over which the Jacksonville District currently exercises regulatory jurisdiction under the authority of both section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act on all or a portion of the listed water. The absence of a water on these lists does not mean it or a portion of it is not a navigable water. Likewise, the inclusion of a water on these lists is not meant to imply that the water is subject to section 10 authority in its entirety. All waters subject to the ebb and flow of the tide (tidal action) are navigable waters of the US, and many of the waters listed below have some portion that is subject to the ebb and flow of the tide. Inquiries concerning Department of the Army Permit requirements on these and other tributary streams and lakes not listed below should be submitted on a case-by case basis to the Regulatory Division, Jacksonville District.

The section 10 waters lists (below) from the Jacksonville District were compiled from multiple approved and draft navigability studies conducted during the 1970s and 1980s, and from local knowledge of tidally influenced waters. The District makes no claim that these lists are complete or completely accurate. These lists are for regulatory reference purposes only. They are not a substitute for a jurisdictional determination (JD). It is imperative that you contact the appropriate Regulatory Permit Section for a determination on whether the Corps is able to ascertain if a particular project falls within or outside of section 10 authority.

STATE OF FLORIDA

Rivers and Creeks

Acosta Creek	Bessey Creek	Bowlees Creek
Alafia River	Big Davis Creek	Box Branch
Alapaha River	Big Fishweir Creek	Boynton Canal
Alapahoochee River	Big Juniper Creek	Braden River
Alaqua Creek	Big Marco River	Bradley Creek
Alexander Springs Creek	Big Mud Creek	Bray Creek
Alligator Creek	Big Mulberry Branch	Brick-Alligator Lake Canal
Alligator Lake-Lake Gentry Canal	Billy Creek	Britt Creek
Amelia River	Black Creek	Broad River
Anclote River	Black Creek (Walton County)	Brothers River
Apalachicola River	Black Water Creek	Broward Creek
Arlington River	Blackwater River	Broward River
Aucilla River	Blind Creek	Browns Creek
Axle Creek	Blockhouse Creek	Buck Creek
Banana River	Blounts Branch	Buckhorn Creek
Barrentine Creek	Blue Creek	Bull Creek
Barron River	Blue Hole Creek	Bulow Creek
Basin Creek	Blue Springs Run	Bumble Bee Creek
Bayou Marcus Creek	Bluff Branch	Burnt Mill Creek
Bear Creek	Boathouse Creek	Butcher Pen Creek
Bear Creek (Bay County)	Bogey Branch	Butler Creek
Belcher Canal	Boggy Creek	C-15 Canal
Bells River	Bonnet Creek	C-17 Canal
	Botts Creek	C-18 Canal

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C-23 Canal	Deer Creek	Hillsborough River
C-24 Canal	Depot Creek	Hitchens Creek
C-51 Canal	Dillaberry Branch	Hog Creek
Cabbage Creek	Doctors Lake	Hogan Creek
Callaway Creek	Dog Branch	Hogpen Creek
Caloosahatchee River	Drummond Creek	Holiday Harbor
Camp Branch	Dunns Creek	Holmes Creek
Caney Branch	Durbin Creek	Holmes Creek (Jackson County)
Canoe Creek	East Bay River	Hominy Branch
Capo Creek	East Creek	Homosassa River
Carpenters Creek	East River	Honey Creek
Carrabelle River	Eau Gallie River	Hontoon Dead River
Casa Cola Creek	Econfina Creek	Hopkins Creek
Cat Creek	Econfina River	Horseshoe Creek
Cedar Creek	Econlockhatchee River	Hospital Creek
Cedar Point Creek	Egans Creek	Howard Creek
Cedar River	Eight Mile Creek	Hudson Bayou
Cemetery Creek	Elbow Branch	Hulett Branch
Chassahowitzka River	Elbow Creek	Huston River
Chatham River	Eleven Mile Creek	Ichetucknee River
Chattahoochee River	Eph Creek	Imperial River
Chicopit Bay	Escambia River	Inconstation Creek
Chipola River	Esterio River	Indian Creek
Choctawhatchee River	Etonia Creek	Indian Creek
Christopher Creek	Fakahatchee River	Indian River
Clapboard Creek	Fenholloway River	Indian River North
Clark Creek	Fish Creek	Istokpoga Creek
Clarkes Creek	Fisheating Creek	Jackson Canal
Clear Creek -	Fishing Creek	Jackson Creek
Cocohatchee River	Fitzpatrick Creek	Jackson River
Coldwater Creek	Five Mile Creek	Joe River
Coon Lake-Lake Lizzie Canal	Flora Branch	Johnson Creek
Coral Gables Waterway	Forked Creek	Johnson Creek (Gulf County)
Cormorant Creek	Fort George River	Johnson Slough
Cow Creek	Fourmile Creek	Jolly River
Cowhead Creek	Fox Cut	Jones Creek
Cracker Branch	Frazier Creek	Jones Swamp Creek
Cradle Creek	Garden Creek	Julington Creek
Craig Creek	Get Out Creek	Juniper Creek
Crane Creek	Ginhouse Creek	Karen Canal
Crooked Creek	Goodbys Creeks	Kendall Creek
Crooked Creek (Martin County)	Governor Creek	Kentner Creek
Crooked River	Graham Creek	Kentucky Branch
Crooked River (Franklin County)	Grog Branch	Kissimmee River
Cross Creek	Guano River	Krueger Creek
Cross Florida Barge Canal	Gulley Creek	L-40 Canal
Crystal River	Haines Creek	L-8 Canal
Cunningham Creek	Half Creek	Lafayette Creek
Cut Creek	Halifax River	Lake Ajay-Fells Cove Canal
Cypress Creek	Hannah Mills Creek	Lake Apopka-Beauclerc Canal
Danforth Creek	Harney River	Lake Ashby Canal
Dania Cut-off canal	Harrison Creek	Lake Center-Coon Lake Canal
Days Creek	Harry's Creek	Lake Griffin-Yale Canal
Dead River (Kissimmee River)	Hatchett Creek	Lake Hart-Ajay Canal
Dead River (Lake County, Florida)	Hatchineha Canal	Lake Joel-Myrtle Canal
Dead River (Wakulla County)	Haulover Creek	Lake Joel-Trout Canal
Dean Dead River	Haw Creek	Lake Lizzie-Alligator Canal
DeBlieu Creek	Haynes Creek	Lake Marion Creek
Deep Bottom Creek	Henderson Creek	Lake Mary Jane-Hart Canal
Deep Creek	Highland Park Run	Lake Myrtle-Mary Jane Canal
	Hillsboro Canal	Lake Okeechobee Rim Canal
	Hillsboro River	

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Lake Okeechobee Waterway
Lake Preston-Myrtle Canal
Lake Worth Lagoon
Lanceford Creek
Lehigh Canal
Leitner Creek
Little Black Creek
Little Cedar Creek
Little Clapboard Creek
Little Double Creek
Little Econlockhatchee River
Little Fishweir Creek
Little Juniper Creek
Little Manatee River
Little Mud Creek
Little Pottsburg Creek
Little River (Biscayne Bay)
Little River (Ochlockonee River)
Little Rocky Creek
Little Saint Marys River
Little Trout River
Little Wekiva River
Little Withlacoochee River
Lofton Creek
Lolly Creek
Long Branch
Long Creek
Lopez River
Lostmans River
Lower Sister Creek
Loxahatchee River
Lumber Creek
Mainard Branch
Manatee Creek
Manatee River
Marshall Creek
Mason Branch
Matanzas River
McCoys Creek
McCullough Creek
McGirts Creek
McQueen Creek
Miami Canal
Miami River
Middle River
Middle River (South and North Fork)
Mill Branch
Mill Log Creek
Mills Creek
Moccasin Branch
Moccasin Slough
Moncrief Creek
Monroe Canal
Moore's Creek
Moore's Creek (Martin County)
Morris Dead River
Morrison Creek
Moses Creek
Moultrie Creek
Mud Creek
Murphy Creek

Myakka River
Myakkahatchee Creek
Nassau River
New Castle Creek
New River (Broward County)
New River (Collier County)
New River (Franklin County)
New River (Pasco County)
New River (Union/Bradford County)
New River Canal off LO
New Rose Creek
Nichols Creek
Ninemile Creek
NN Creek
Norris Dead River
North Fork St. Lucie River
North New River Canal
Ochlockonee River
Ocklawaha River
Old Channel
Oldfield Creek
Oleta River
Open Creek
Orange Creek
Orange Grove Branch
Orange River
Ortega River
Pablo Creek
Paines Branch
Palatlakaha River
Palm River
Payne Creek
Pea River
Peace River
Pecks Branch
Pellicer Creek
Perdido River
Peters Branch
Peters Creek
Phelps Creek
Philippi Creek
Pine Barren Creek -
Pine Log Creek
Pinhook River
Pithlachascotee River
Plummer Creek
Polly Creek
Poncho Creek
Pond Creek
Poppleton Creek
Porpoise Creek
Pottsburg Creek
Puckett Creek
Pumpkin Hill Creek
Rainbow River
Red House Branch
Reedy Creek
Ribault River
Rice Creek
Robinson Creek
Rock Springs Run

Rocky Creek
Rocky Creek (Okaloosa/Walton)
Rodgers River
Rosalie Creek
Rushing Branch
Saint Sebastian River
Salt Creek
Salt Creek (Dixie County)
Salt Run
Salt Springs Run
San Carlos Creek
San Julian Creek
San Sebastian River
Sand Beach Branch
Sandy Creek
Sandy Run
Santa Fe River
Saul Creek
Sawpit Creek
Scipio Creek
Scoggin Creek
Shad Creek
Shark River
Shell Creek
Shingle Creek
Shipyard Creek
Shired Creek
Shoal River
Short Canal
Silver Glenn Springs Run
Silversmith Creek
Simms Creek
Simpson Creek
Sink Creek
Sisters Creek
Six Mile Creek
Sixteen Mile Creek
Smith Creek (Flagler)
Smith Creek (St. Johns)
Snake Creek
Snell Creek
Soap Creek
Soldier Creek
Soldier Creek (Escambia County)
Sombrero Creek
Sopchoppy River
South Amelia River
South Fork Black Creek
South Fork St. Lucie River
South Port Canal
Spring Creek
Spring Garden Creek
Spring Warrior Creek
Spruce Creek
St Francis Dead River
St. Cloud Canal
St. Johns River
St. Lucie Canal
St. Lucie River
St. Marks River
St. Marys River

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Steinhatchee River
Stokes Creek
Stranahan River
Strawberry Creek
Styles Creek
Summer Haven River
Suwannee River
Sweetwater Creek
Swimming Pen Creek
Tarpon River
Taylor Creek
Telogia Creek
Ten Mile Creek
Terrapin Creek
Thomas Creek
Thomas Mill Run
Three Otter Creek
Tiger Creek
Tocoi Creek
Tolomato River

Tomoka River
Trout -Coon Lake Canal
Trout Creek
Trout River
Turkey Creek
Turkey Creek (Okaloosa County)
Turner River
Upper Sister Creek
Waccasassa River
Wacissa River
Wakulla River
Walker creek
Wares Creek
Warf Creek
Warner Creek
Weeki Wachee River
Wekiva River
Weohyakapka Creek
West Branch
West Palm Beach Canal

West Run Cracker Branch
Wetappo Creek
Whitney River
Whittenhorse Creek
Williamson Creek
Willoughby Creek
Wills Branch
Withlacoochee River (central Florida)
Withlacoochee River (north Florida)
Woodruff Creek
Wrights Creek
Wrights Creek (Walton County)
Ximanies Creek
Yellow River
Ziegler Dead River

Lakes

Adams Lake
Alligator Lake
Blue Cypress Lake
Blue Lagoon
Brick Lake
Cherry Lake
Clark Lake
Clear Lake
Coon Lake
Crescent Lake
Cypress Lake
Dead Lakes
Deer Point Lake
Doctors Lake
Dumfoundling Bay
East Lake Tohopekaliga
Fells Cove
Horseshoe Mud Lake
Kimball Lake
Lake Ajay
Lake Apopka
Lake Ashby
Lake Beauclair
Lake Beresford
Lake Carlton
Lake Center
Lake Cone
Lake Dexter
Lake Dora
Lake Emma
Lake Eustis
Lake Florence
Lake Gentry
Lake George
Lake Griffin

Lake Harney
Lake Harris
Lake Hart
Lake Hatchineha
Lake Hell 'n Blazes also called
Lake Hellen Blazes or Lake
Helen Blazes
Lake Ida
Lake Istokpoga
Lake Jackson
Lake Jessup
Lake Jesup
Lake Joel
Lake Kissimmee
Lake Lizzie
Lake Louisa
Lake Lucy
Lake Manatee
Lake Manatee (Manatee County)
Lake Mangonia
Lake Marion
Lake Mary Jane
Lake Minnehaha
Lake Minneola
Lake Monroe
Lake Myrtle
Lake Nellie
Lake Okeechobee
Lake Ola
Lake Osborne
Lake Poinsett
Lake Powell
Lake Preston
Lake Rosalie
Lake Rousseau

Lake Santa Fe
Lake Seminole (Gadsden, Jackson Counties)
Lake Seminole (Leon County)
Lake Seminole (Pinellas County)
Lake Susan
Lake Talquin
Lake Tarpon
Lake Thonotosassa
Lake Tohopekaliga
Lake Washington
Lake Weohyakapka
Lake Wimico
Lake Winder
Lake Woodruff
Lake Yale
Little Lake George
Little Lake Harris
Little Lake Santa Fe
Little Sawgrass Lake
Lochloosa Lake
Loughman Lake
Marco Lake
Maul Lake
Mud Lake
Orange Lake
Puzzle Lake
Rodman Reservoir
Ruth Lake
Salt Lake
Sawgrass Lake
Silver Lake
Spring Garden Lake
Stagger Mud Lake
Tick Island Mud Lake

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Tiger Lake
Trout Lake
Tsala Apopka Lake

Ward Lake
Ward Lake (Manatee County)

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