USACE Regulatory Process for Water Supply Projects – A Texas Overview

Society of Texas Environmental Professionals
Fort Worth, TX
January 30, 2016

Chandler Peter
Technical Specialist
Regulatory Division
Fort Worth District
USACE Districts in Texas - Regulatory

- Albuquerque District
- Tulsa District
- Fort Worth District
- Galveston District (Lead District)
Program Authorities

Construction and dredging
Section 10 Rivers and Harbors Act 1899

Discharge of dredged and fill material
Section 404 Clean Water Act

Transport and discharge of Dredged material
Section 103 Ocean Dumping Act
Variety - The Spice of Life

- Regulatory engaged in differing water supply actions
- Most smaller actions being reviewed via Nationwide Permits (NWPs)
- Larger, higher profile actions via Individual Permit (some w/ EISs)
- Graduated levels of effort
Common Permits for Smaller Projects

- NWP 3 – Maintenance of existing structures
- NWP 7 - Outfall & Intake Structures
  - Indirect effects potential issue for intakes
- NWP 12 - Utility Line Activities
  - Tarrant Regional’s Integrated Pipeline
- NWP 39 – Commercial/Institutional Projects – water/wastewater treatment plants
- Review of a draft ranking for funding under Prop. 6 showed 90% of projects likely to meet NWP limits or no permit required
Larger Projects Get Greater Attention

- Primarily reservoirs (typically trigger EIS)
- Greater impacts = greater effort
  - NEPA, Public Interest and 404(b)(1)s
- All primary evaluation categories affected (as informed by scoping)
  - Need and purpose
  - Alternatives
  - Impact analysis
  - Mitigation
Potential Causes for Delay/Expense

- Permit Process
  - Procedural requirements
    - Independent review of applicant prepared information requires additional work
  - Statutory and litigation driven
    - The more complex the project/impacts the more in-depth the procedures
  - Process used to play out new/ongoing disputes between water providers or agencies
  - Project management and coordination amongst other EISs for consistency
Potential Causes for Delay/Expense

- Complexities of Addressing State Water Law and Regulatory Needs
  - Texas water rights and water law
    - Extensive amounts of existing information available associated with water sources and development strategies resulting in complex alternatives analyses
    - Contested water rights case issues can carry over into regulatory permitting arena
  - Advances in knowledge/science allow for more complex assessment methods to address NEPA/404 regulations
    - Modeling needs differ (e.g., WAM vs. Riverware)
Potential Causes for Delay/Expense

- **Lack of standardized methods/metrics**
  - Applicants have differences in:
    - Reliability criteria (firm/safe yield)
    - Measures of use/demand
    - Projecting growth
    - Hydrologic models
      - Lack of documentation on hydrological models
  - Agencies/academia have differences in which methods to employ to assess resource factors and effects

---

BUILDING STRONG®
Potential Causes for Delay/Expense

- **Complexity of issues**
  - Apparent simple issues can actually have difficult sub-issues associated with them that require additional data collection and analysis to resolve
    - Products/positions from various sources may not be readily available and can interfere with critical path items
    - “Political maneuvering” by various entities can delay work products
      - Differences in views of ongoing and future actions to occur within a basin
Potential Causes for Delay/Expense

- **Applicant Actions**
  - Want to control the process
    - Ensure preferred option has best chance of being permitted
  - Put forth positions/issues that require additional data collection/validation
  - Make changes in middle of or late in process
    - Partners/participants drop out/join in
    - Change demands/use rates/growth projections
    - Modify project purpose
Potential Causes for Delay/Expense

- **Organized opposition**
  - Involves governmental entities as well as non-governmental organizations
    - Know procedural aspects of permit program and purposefully slow process down
    - Some view delay as victory
  - Raise difficult and complex issues and sub-issues as well as challenge assessment methodologies
  - Higher likelihood of litigation
    - Requires more documentation and higher resolution analysis
Example Large Water Supply Projects

- **Lake Columbia, TX, 15+ years, $2M+ spent**
  - Challenges - Alternatives, impacts, NEPA compliance
  - Result - EPA EU3 rating on EIS, on hold due to funding
- **Newport News, VA, King William Reservoir, 20+ years, $50M+ spent**
  - Challenges - Need/purpose, alternatives, impacts, tribal, mitigation
  - Result - EPA vetoed 1st permit; court overturned 2nd permit; no project built
- **Marion, IL, Sugar Creek Lake, 15+ years, $10M+ spent**
  - Challenges - Purpose and alternatives
  - Result - Court overturned permit; no project built
- **Denver, CO, Two Forks Reservoir, 10+years, $40M+ spent**
  - Challenges - Need/purpose, alternatives, impacts, mitigation
  - Result - EPA vetoed permit; no project built
Actions Taken by USACE in Texas

- 2007 Interagency Educational Workshops for water resource providers and resource agencies.
- Developed permit process flowchart 2013
  - Multi-agency - publication pending.
- Established regional water supply team
  - Includes 4 Districts & Southwestern Division
  - Evaluating current processes & developing recommendations to improve consistency
  - Developing possible improvements/strategies for increased efficiency/predictability
  - Identified data needs for permitting [draft “Gap” Analysis]
- Regional USACE staff training on Regulatory EISs
Ongoing Actions in Texas

- Reviewing Water Availability Model (WAM) for possible application to 404 permit analyses
- USACE Planning, Regulatory and Programs coordinating “Gap” Analysis ideas with TWDB
- Assessing method(s) to address conservation and unit use rates in permit process
- Implementing regional review of EISs for water supply projects requiring Regulatory permits
- Considering development of internal regional EIS SOP for 404/10 permit process
Suggested Strategies/Future Actions

- Place Permit Process Flow Chart on TWDB website
- Develop USACE/TWDB work plan [“Gap” Analysis]
  - Develop project priorities based on “scalability”
  - Establish interagency cooperation framework & team(s)
  - Coordinate with cooperating agencies to undertake joint staff level interagency training on State Water Plan and permit processes
  - Coordinate with cooperating agencies to undertake joint interagency public outreach to water suppliers to improve understanding of permit review process
- Improve consistency of assessment methods and impact analysis
- Data sharing
- Cultivate financial sources to support these efforts
Suggested Strategies/Future Actions

- Goals of these actions
  - Increase predictability for applicants
  - Improve understanding of permit processes
  - Reduce duplicative efforts
  - Improve permit applications and documentation
  - Improve focus on analyses/data needed
  - Time and cost savings
Questions?

I'll have a glass of your Lake Mead 2007 and she'll have a glass of your Arizona vintage aquifer, and bring us a bottle of your finest recycled effluent 2020.

Of course... could I interest you in a glass of our desalinated Pacific 2018?

Fitzsimmons
The Arizona Daily Star 2014