

# USACE Regulatory Process for Water Supply Projects – A Texas Overview

**Society of Texas Environmental  
Professionals  
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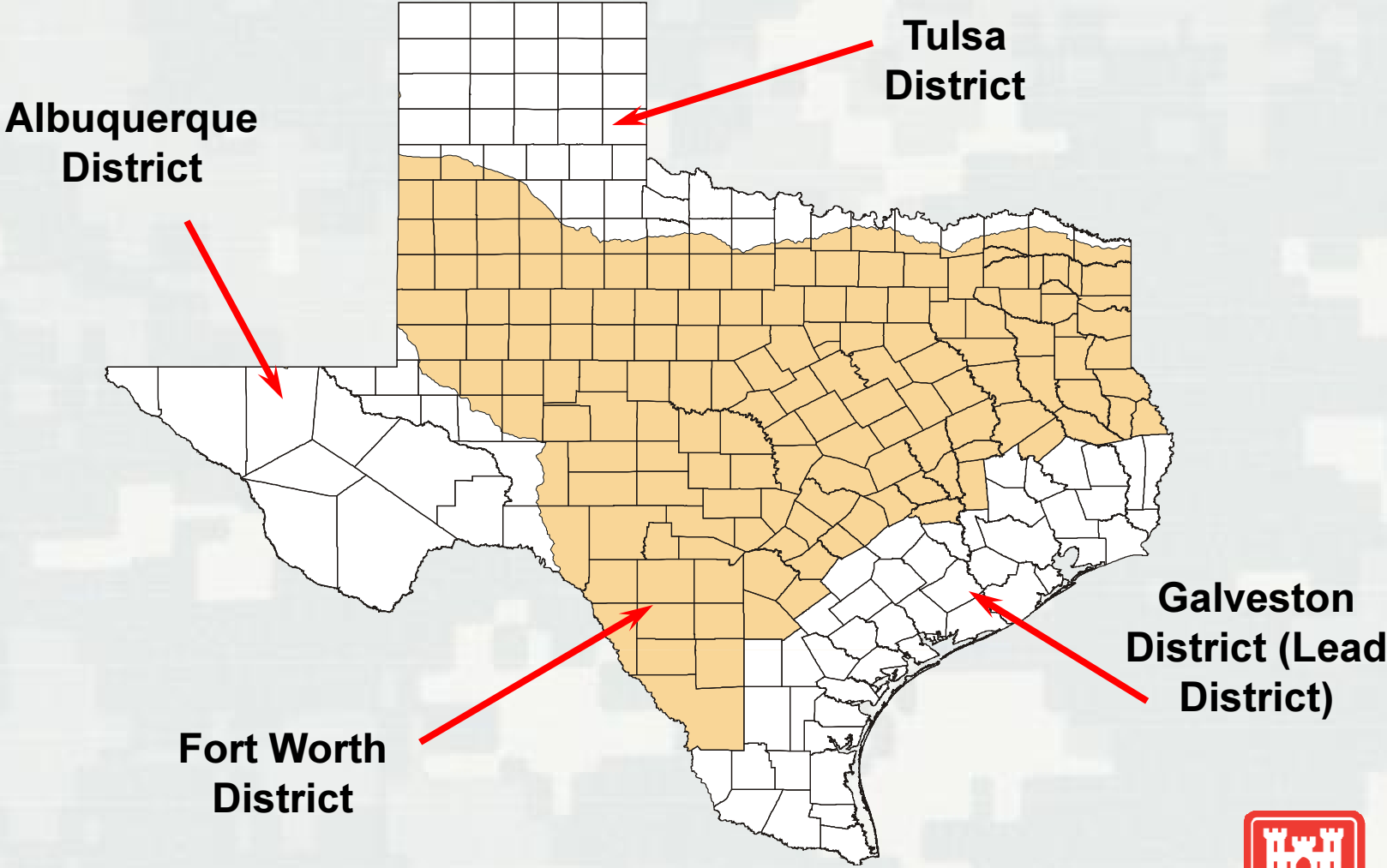
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# USACE Districts in Texas - Regulatory



# 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**



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# Variety - The Spice of Life

- Regulatory engaged in differing water supply actions
- Most smaller actions being reviewed via Nationwide Permits (NWP's)
- 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



# 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 Challenges & Results

- 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 1<sup>st</sup> permit; court overturned 2<sup>nd</sup> 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  
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