



Federal Actions Impacting Water Projects

Texas Municipal League Conference

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Presented by:

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**“Whiskey’s for drinkin’...water’s for
fightin’!”**

- Overview of Presentation:
 - Clean Water Act
 - Endangered Species Act
 - Lacey Act
 - 1926(b) Issues

- Clean Water Act 404 Permit
 - Authorizes the discharge of dredged or fill materials into navigable waters
 - Requires steps to avoid and minimize impacts to aquatic resources
 - Requires mitigation for unavoidable impacts
 - Public notice and meetings
 - Reapplication allowed only if new and material evidence is offered

- NEPA Process
 - Triggered for “major federal actions” impacting the environment
 - In re reservoirs, directs the USACE to prepare an Environmental Impact Statement before a 404 permit is issued
 - Drives an alternatives assessment based on the “purpose and need” for a project

- EPA Veto Authority
 - Authorized under CWA 404(c)
 - Public notice and comment opportunities
 - Must be for an “unacceptable adverse effect” on i) municipal water supplies, ii) fish and wildlife, or iii) recreational areas
 - 12 projects vetoed since 1981

- Legislative Support
 - Unique Reservoir Designations under Texas Water Code 16.051
 - Permitting directives via the Conservation Amendment
 - Funding directives via the Conservation Amendment

- Reservoir Access Issues
 - Public access cannot be denied to state water, as long as no trespass on private property
 - Permittees are not required to afford access
 - TWDB funding requires permittees to afford “adequate” public recreational access.

What Have We Learned?

- Permitting of new reservoirs involves long-term commitment by applicants
- Permitting of new reservoirs involves many moving parts
- Permitting of new reservoirs requires coordination with various state and federal agencies
- Permitting outcomes are uncertain
- Development of new water supplies is challenging



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