Accounting Plans: Regulators' Needs and Water Portfolio Management Opportunities

By Nathan Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.

Over the last decade or more in the water rights arena, accounting plans have become among the most important features of water rights as administered by the Texas Commission on Environmental Quality ("TCEQ"), as the plans govern the daily implementation of diversions of water in light of a variety of factors. As explored throughout this ongoing water supply planning series, a well-rounded water supply strategy includes both legal and technical components. As such, the development of a carefully crafted accounting plan should include the consideration of a variety of regulatory needs, alongside a number of strategic considerations, in order to frame an accounting protocol that satisfies TCEQ's requirements while also meeting the water supplier's (and its customers') needs. So far, our series has focused on tools and strategies that can help maximize the use of water supplies to meet the needs of providers and their customers. Having the right accounting plan in place, however, is central to many planning tools and can support a number of strategies if carefully crafted and maintained.

The development of an accounting plan is more than a "check the box" exercise for water rights applications. Although not required for every water right application, accounting plans are important in order to demonstrate how a water right operates in conjunction with other rights, stream flow conditions, storage and related impacts, reuse of water (when applicable), and carriage losses, among other factors. Significantly, environmental flow conditions, when applicable and required, must be adequately addressed before TCEQ can approve a plan. Beyond these fundamental requirements, however, attention to other needs can differentiate an accounting plan that merely satisfies regulatory requirements from one that is an asset to water rights portfolio management. Consideration should also be given to the needs of downstream diverters, existing accounting plans, and the source of the new supply, particularly if water reuse is involved. Additionally, when a reuse application is sourced in mixed groundwater and surface water-based supplies, the right accounting plan should also include details identifying the division between such sources, among other factors.

No accounting plan should be viewed in isolation, as a supplier's broader water rights should be examined whenever a new authorization is sought. TCEQ rules allow for management of water rights in a manner that may "free up" supplies with more junior priority dates for use prior to the use of more senior, drought-resistant rights. For example, Chapter 297 of the Texas Administrative Code provides that junior rights may be accounted for first each year, so long as a water rights holder uses its most senior dates first, at least for rights having multiple priority dates. The preparation of water use reports, due each year by March 1, also presents an opportunity to consider whether the ongoing management and use of a portfolio of water rights most

efficiently accounts for water in a manner that taps into the most valuable, most senior, rights at the best time.

Discussions that start with accounting should also include reliability factors – as to both the water right in question as well as other supplies. The delta between firm and paper yields of certain supplies is often significant. As a result, a supplier's accounting plans, in the aggregate, can greatly inform resource management strategies, influenced by streamflow trends, sedimentation, seasonal demands, and discharges. Further, particularly when amending a water right, there may be opportunities to amend and revise accounting protocols to reflect on-the-ground developments that have occurred since the base right was issued.

The right team can help tailor many of the above considerations to a water supplier's particular needs and circumstances. As analyzed in our earlier article about the development of such a team, a water supplier is best served when its projects and water rights management are scrutinized and supported by team members who are familiar with the evolving landscape of accounting practices and regulatory needs. Experienced technical staff can provide cost-effective analysis of environmental flow conditions in light of TCEQ's regulations. Decision points related to the development of accounting plans require a team with the right background and capabilities in order to help a supplier extend supplies and get the most value out of the accounting plan tool.

Our next article will build upon the accounting framework by identifying how certain water supply needs can be impacted by particular conservation efforts. Many Texas suppliers have implemented conservation measures that stretch existing water supplies and allow flexibility for addressing other needs and growing demands in their service areas. That article will highlight conservation best management practices in the context of water supply development and other traditional methods of growing and maintaining water supplies.

Nathan Vassar is an attorney in the firm's Water Practice Group. Nathan's practice focuses on representing clients in regulatory compliance, water resources development and water quality matters. He regularly appears before state and federal administrative agencies.
nvassar@lglawfirm.com