

Water Supply Planning: Federal Issues Preview*

By Nathan E. Vassar

Although water suppliers operate primarily within the realm of state and local laws and regulations, a critical component for many water projects and strategies involves federal issues. Over the course of the next several articles in this water supply planning series, we will explore the overlay of federal involvement in water supply planning, obstacles to anticipate, as well as opportunities to address federal concerns. We will focus on certain agencies and their processes, highlighting issues that can arise at various stages of suppliers' plans and projects.

At the outset of this federal focus, however, it is important to revisit an earlier topic, as the selection of the right team is fundamental to navigate a complex web of federal statutes, regulations, and the myriad agencies that enforce and implement them. Building the right team for water supply projects will sometimes require the involvement of those who specialize in certain areas, such as endangered/threatened species issues, jurisdictional determinations, Clean Water Act section 404 permit applications, among others. For example, knowing the differences between certain water availability modeling tools at the state and federal levels can be important in order to demonstrate the firm nature of a supply, when analyzing projected demands. Furthermore, as with any regulatory process, team members who know the decision-makers at certain agencies can make a difference in addressing challenges as they may arise. An articulate and knowledgeable lobby component may also be valuable in conveying messages to elected officials (and others), as needed during the course of a certain project. Of course, it is completely possible that the team assembled for state permitting issues is also perfectly equipped to handle federal matters as well, but it can be important to do early due diligence as to specialized needs in the federal arena to avoid facing surprises later on.

As we will explore in later detail throughout the series, unique federal issues have a way of slowing down a project if one is not prepared on the front end. The overlay of a designated critical habitat for some species can require surveying, impacts analyses, and ultimately may cause a re-routing or re-design decision. Depending upon archeological findings within a project's footprint, both state and federal statutes may be triggered with respect to historical preservation, and possibly consultation with those whose heritage is connected to the site(s). In addition, the nexus between water rights issues and water quality cannot be ignored, as we analyzed several months ago in an earlier article.

As is often the case, technical considerations so often include connections to legal requirements, including notice issues, case law updates concerning jurisdictional boundaries (among others), and implications of transferring water across basins. By way of example, recent federal jurisprudence

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makes clear that interbasin transfers do not trigger the need for a federal discharge permit (however state law impacts the priority dates of such water once moved to the new basin).

Many organizations exist across Texas with a significant federal focus and committees, including those at TWCA, WEAT, TACWA, and NACWA, for example. Engagement in those organizations can help identify appropriate team members, as well as maintaining and updating suppliers' own knowledge of key federal issues that may have an impact upon projects.

In the coming articles, we will hone in on specific federal areas, exploring the ways in which water suppliers can best anticipate and address applicable requirements, while (ideally) avoiding surprises as they manage, stretch, and extend critical water supplies.

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