



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

Subject: Implementation of an Interagency Workgroup
Partnering Agreement
Date : Feb. 10, 2017

SUBJECT: The U.S. Army Corps of Engineers, Fort Worth District (USACE) and the U.S. Environmental Protection Agency Region 6 (EPA R6) are releasing this Public Notice to announce the implementation of an interagency workgroup Partnering Agreement (attached). The goal of this agreement is to make the permit evaluation process for future large water supply projects in Texas more efficient and predictable. The Texas Water Development Board (TWDB), while not a party to the Agreement, will be a principal contributor and facilitating agency in development of some of the products associated with the Agreement.

The Water Supply Working Group (WSWG), consisting of the three agencies, formulated the following mission statement: "To examine the review process for large water supply projects in Texas and to identify actions that will make the process clearer and more predictable for permit applicants and stakeholders." The USACE and EPA R6 are soliciting comments on the 7 "Action Items" identified in Paragraph IV of the attached Agreement. The actions in the Partnering Agreement will inform the permitting process for future large water supply projects in Texas. It should be noted that the Federal agencies are seeking information to potentially inform future applicants and are NOT promulgating new rules related to their permit evaluation processes nor modifying existing rules. The Partnering Agreement is a non-binding agreement between two Federal agencies and is NOT associated with any formal rulemaking process.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must be submitted on or before March 12, 2017, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. Comments and requests for additional information should be submitted to: Regulatory Division, CESWF-DE-R, U.S. Army Corps of Engineers, P.O. Box 17300, Fort Worth, TX, 76102-0300; or via email: ceswf-de-r@usace.army.mil. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

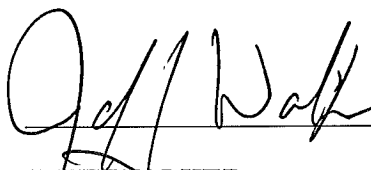


In the fall of 2015, the U.S. Army Corps of Engineers, Southwestern Division (USACE); the U.S. Environmental Protection Agency (USEPA), Region 6; and the Texas Water Development Board (TWDB) entered into a dialogue focused on improving interagency coordination related to large water supply projects in Texas. Generally, large or major water supply projects are those projects where predictable impacts are significant enough to warrant the development of an Environmental Impact Statement, as required by the National Environmental Policy Act.

The attached Partnering Agreement (Agreement) was developed from that initial dialogue. The Agreement focuses on the group's efforts to produce actionable items, while giving Clean Water Act Section 404 permit applicants a greater understanding of the future permit evaluation process and related efficiencies.

The TWDB continues to participate with the USACE and the USEPA by sharing its expertise in Texas water planning. The TWDB is not a regulatory agency and is not part of the Section 404 permit process, therefore ultimate decisions about that process will be made by USACE and USEPA. TWDB does recognize that its institutional knowledge of the Texas water planning process presents an opportunity for all three agencies to identify efficiencies.

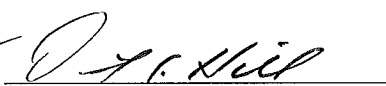
Following the Federal agencies approval of this Agreement, the agencies will work expeditiously, with existing staffing and budget, to complete the action items. Beyond the specific action items enumerated in the agreement, the three agencies see this effort as an opportunity to develop a closer working relationship.



 JEFF WALKER

Executive Administrator
 TWDB

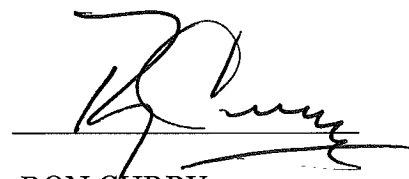
7-27-16
 Date



 DAVID C. HILL

Brigadier General, U.S. Army
 Commanding

07 JUL 16
 Date



 RON CURRY

Regional Administrator
 EPA Region 6

07/27/2016
 Date

**PARTNERING AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS SOUTHWESTERN DIVISION AND
U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 6**

- I. Background: In the fall of 2015, the U.S. Army Corps of Engineers, Southwestern Division (USACE); U.S. Environmental Protection Agency (EPA), Region 6; and Texas Water Development Board (TWDB) entered into a dialogue focused on improving interagency coordination as it relates to large water supply projects in Texas. Generally, large or major water supply projects are those projects where predictable impacts are significant enough to warrant the development of an Environmental Impact Statement (EIS), i.e., EIS level, as required by National Environmental Policy Act (NEPA). As a result of this dialogue, this Partnering Agreement (Agreement) was developed.
- II. While the TWDB is not a party to this Agreement, the TWDB is continuing to participate in the dialogue with the USACE and EPA by sharing its expertise in Texas water planning, particularly related to population projections, and water usage. TWDB will be a principal contributor and facilitating agency in development of some products associated with this Agreement.
- III. Purpose: The Water Supply Working Group (WSWG), consisting of the 3 agencies, formulated a mission statement which guided the development of this Agreement. That statement is: To examine the review process for large water supply projects in Texas and to identify actions that will make the process clearer and more predictable for permit applicants and stakeholders. The purpose of this Agreement is to articulate the information and/or approach to be used in each of the Action Items in Part IV below.

The proposed actions are designed to promote, maintain, and enhance an effective and efficient working relationship for implementing the Clean Water Act Section 404 Regulatory Program in Texas as it relates to permit reviews of major water supply projects. Following agency approval of this Agreement, a report indicating the status of each action will be developed by the WSWG and updated every 6 months, thereafter, until all actions are completed.

- IV. Action Items: Action Items can generally be considered as a compilation of existing information and processes that either allow or hinder the development of frameworks or products. Action Items products are intended to inform applicants and stakeholders.

The completed Action Items are expected to be informative and provide a range of generally acceptable approaches that will not, however, be applicable, feasible, or acceptable for every situation. The completed Action Items are not expected to be prescriptive sets of rules or algorithms. The literature searches and analyses performed for the Action Items are not expected to entail a full research project. The results of the analyses are not expected to extend beyond the agencies' authorities or expertise.

The frameworks and information developed from the completed Action Items will be designed to give Section 404 permit applicants a greater understanding of the future permit process as well as realize efficiencies in the process. All permit applications will be evaluated in accordance with applicable regulations including 40 CFR 1506.5(a) and 33 CFR 320 - 332.

The facilitating agencies for each Action Item are listed below. Attachment A lists the team members for each Action Item. The WSWG will coordinate on the prioritization of efforts to enhance completion of the Action Items.

- (1) Population Growth Estimates – Population growth is a key factor in estimating water supply demand and need for projects proposed for authorization under Section 404. TWDB’s approach to population growth for the 16 state planning regions has been discussed by the WSWG. Varying means of estimating population growth, appropriate for the scale and scope of a project (i.e., scalability relative to the predictable aquatic resource impacts), will be reviewed and analyzed for potential use in evaluating water supply projects. Based on the results of the analysis, recommendations will be presented for future Section 404 permit applicant use. The WSWG understands that TWDB will be a principal contributor to this Action Item. TWDB is the facilitating agency.
- (2) Water Use Rate, Gallons Per Capita Per Day (GPCD) – GPCD estimates can be an indicator of prior conservation efforts. The estimates can also provide an indication of an applicant’s water usage as compared with surrounding areas or similar types of entities. A general review and analysis of various approaches to calculating water consumption or water use rates for an area or community will be undertaken. Based on the results of the analysis, a collection of methods for calculating GPCD will be developed for large water supply projects, with a focus on more sophisticated approaches. Future applicants will be informed that use of the methods from this collection should serve to minimize the time and effort associated with the review and validation of GPCD data in the context of Section 404 permit evaluations. TWDB is the facilitating agency.
- (3) Conservation – Future conservation will be considered a water supply need reducer rather than a project alternative for Section 404 purposes. Information concerning the role of conservation will be applied to both the Section 404 permitting process and compliance with NEPA. The WSWG will conduct a literature search on water reduction techniques and estimated efficiencies from the techniques. This search will focus on improving water efficiency, reducing water use, and reducing water loss, rather than water reuse. The review on water loss may include all components of the water system, from source, through treatment, to delivery to users. The results of the analysis will be used to develop a framework for formulating appropriate water conservation plans. Future applicants will be informed that use of this framework should serve to minimize the time and effort associated with the review and validation of conservation plans in the context of Section 404 permit evaluations. EPA is the facilitating agency. TWDB will be a participating agency.

- (4) Reuse – Water reuse, including direct or indirect potable and recycled previously used water (i.e. wastewater treatment plant discharges, or gray water for irrigation), can be a key component of overall water supply strategies. Existing reuse activities or strategies are generally considered a water supply need reducer while future reuse projects or strategies can be considered as project alternatives. There will be a literature search on direct and indirect water recycling practices and case studies. The results of the review will be used to develop information for applicant use on the range of wastewater reuse practices available in modern supply systems. USACE is the facilitating agency. TWDB will be a participating agency.
- (5) Industrial Water Use – Industrial water use is a key factor in estimating water supply demand and need for some EIS level projects proposed for authorization under Section 404. There will be a review and analysis of various information about industrial water use including the methods used to estimate future and existing industrial water use demands. A framework based on the analysis will be developed to assist applicants with estimating future water demands associated with industrial use. Applicants will be informed that use of this framework should serve to minimize the time and effort associated with the review and validation of anticipated future industrial water use data in the context of Section 404 permit evaluations. The WSWG understands that the TWDB is currently undertaking a review of its practices and methods of estimating future industrial use water demands through an outside contractor. This review will be a principle source of information contributed by the TWDB to this Action Item. USACE is the facilitating agency. TWDB will be a participating agency.
- (6) Safety Factor or Reserve – There will be a review and analysis of various approaches to evaluating risks to water systems and supplies. The review will consider contingency supplies for unique situations (e.g., drought, temporary long term loss of a major supply source). While recognizing the legitimate role of reliability, interconnection and redundancy in service delivery, the WSWG will consider how to reduce the potential for duplication of supply in an area. The WSWG will consider how contracts are integrated into water system planning. The results of the analysis will be used to develop a framework for Section 404 permit applicants use as they create and calculate safety factors or reserves for risks considerations. The framework will outline the type of data required and ways in which these issues will be evaluated (e.g., operation scenarios) in the Section 404 permit process. USACE is the facilitating agency.
- (7) Impact Assessment – The extent of impact assessment data needed for permit evaluations is largely dependent on the initial scale and scope of predicted aquatic resource impacts. Models, tools, methods, or protocols, for assessing direct, secondary, and cumulative aquatic resource and other environmental impacts associated with EIS level water supply projects will be reviewed and evaluated. Limitations and sensitivities of the tools will be considered. The evaluation will also consider the extent to which the tools are appropriate for predicting impacts, in the context of Section 404 permit evaluations which will address the resource factors identified in the 404(b)(1) Guidelines. All potential aquatic resource impacts will be considered. The WSWG will coordinate with appropriate resource agencies (e.g.,

Texas Parks and Wildlife, U.S. Fish and Wildlife, Texas Commission on Environmental Quality) to obtain the necessary expertise for development of information about impact assessments. Based on the outcome of this evaluation, a collection of models, methods, or protocols will be developed for Section 404 permit applicant use in identifying the appropriate impact assessment method for large water supply projects. EPA is the facilitating agency.

V. Conditions and Limitations:

- (1) This Agreement is not to be construed in any way as giving rise to a contractual obligation of the parties, including any obligation of funds to any party. As required by the Anti-Deficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by the parties to this Agreement are subject to the availability of appropriated funds and budget priorities. Nothing in this Agreement, in and of itself, obligates the parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
- (2) Nothing in this Agreement exempts the parties from complying with any applicable federal or state environmental laws or regulations.
- (3) This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, in either party or by persons who are not party to this Agreement, against the parties, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the parties.
- (4) This Agreement contemplates Action Item products that are intended to improve the efficiency of review for future proposed water supply projects and does not prescribe specific actions for any Section 404 permit applicants. Parties to this agreement concur that the evaluation or coordination of any current or future water supply proposals will not be delayed awaiting completion of any of the above Action Items.

VI. Termination and Effective Period: This Agreement becomes effective upon the latest date of the last signature. It is intended to remain in effect for three (3) years unless otherwise modified or terminated. This Agreement can be extended or modified through mutual written agreement among the parties. This Agreement may be terminated by any party giving written notice to the other parties of intention to do so. Such notice of intention to terminate may be given in writing to the other parties no less than 90 days prior to termination date, unless parties mutually agree, in writing, to a lesser period, but not to be earlier than the term in process.

STATEMENT OF CONCURRENCE

By signing below I am indicating my concurrence with the this Partnering Agreement which outlines a set of objectives to promote, maintain, and enhance an effective and efficient working relationship for implementing NEPA and the Clean Water Act Section 404 Regulatory Program in Texas as it relates to large water supply projects.

Our agency fully supports the implementation of the tasks identified in this Agreement and will make every effort to commit resources, to the extent feasible, and expedite the completion of each task in which we are participating.



RON CURRY

Regional Administrator
EPA Region 6

07/27/2016
Date



DAVID C. HILL

Brigadier General, U.S. Army
Commanding

27 Jul 16
Date

Attachment A

Texas Water Supply Working Group Partnering Agreement

Agency Team Members for each Action Item				
	Facilitating agency	USACE (name and email)	EPA (name and email)	TWDB (name and email)
Action 1	TWDB			
Action 2	TWDB			
Action 3	EPA			
Action 4	USACE			
Action 5	USACE			
Action 6	USACE			N/A
Action 7	EPA			N/A