

7.0 Permitting Requirements

During the development of the agreement between LCRA and SAWS and the resulting study period plan, certain essential permits were identified as critical to the viability of the project. The project team has evaluated the requirements for the permits and shaped the studies to meet those requirements wherever possible. The major permits for the project include the following:

- Any permit, license, or authorization required by the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act and Section 10 of the River and Harbors Act for the project components. Such permits, licenses, and authorizations (referred to in this document as the Section 404/10 permit) are granted by USACE under Section 404 of the Clean Water Act. USACE has permitting authority over discharge of dredged or fill materials into navigable waters including wetlands and streams (“jurisdictional waters of the United States”). Such permits require compliance with National Environmental Policy Act of 1969 (NEPA) and a water quality certification (Section 401) from TCEQ.
- Water rights and/or amendments to water rights necessary for the project. Water rights permits (including amendments and interbasin transfer authorizations) are granted by TCEQ. These include proposed amendments to existing LCRA water rights, proposed water rights for unappropriated surface water flows to add interbasin transfer authorization and new purposes of use and diversion locations as may be necessary for the project, and approval requests for construction of off-channel storage facilities and conservation ponds.
- Permits, licenses, or authorizations as necessary to develop and use ground water resources. Groundwater conservation district permits for production wells are required from the Coastal Bend, Coastal Plains, and Colorado County groundwater conservation districts (see Section 4.2 for more information about groundwater permitting).

Permitting Schedule

The agreement between SAWS and LCRA requires that these major permits be obtained in final, non-appealable form by February 28, 2010 with provisions for an extension of up to five years. Because Section 404/10 will trigger the NEPA, it will most likely require the development of either an environmental assessment or environmental impact statement. A Section 404/10 permit cannot be granted until after all the necessary documentation for NEPA is complete. The project team is assembling the necessary information for submittal of the Section 404/10 permit application, scheduled for late 2009.

Only USACE (as the federal agency granting the permit) can determine if an environmental assessment or an environmental impact statement is appropriate for this project; however, it is prudent to assume that an environmental impact statement will be required. That assumption has therefore been incorporated into planning. For scheduling purposes, it is

assumed that the processing of the Section 404/10 permit would be concurrent with the later stages of the development of NEPA documents.

Assumptions have also been made regarding processing of both the water rights applications/amendments and groundwater conservation district applications. Water rights applications are processed by TCEQ in two major review steps: administrative review (completeness of submittal) and technical review (substantive analyses). Water rights have a public process, also managed by TCEQ, including public notice, opportunities for public comments, public meetings, and the potential for contested case hearings. Because this project represents a unique and complex interbasin transfer involving amendment of nearly every water right held by LCRA, pre-application consultation with TCEQ is critical to ensure the application(s) are technically complete and allow TCEQ staff to complete its required analysis. With these considerations and the status of individual studies in mind, the project team has determined that an appropriate milestone date for submittal of all applications is 2009, with the exception of groundwater.

Section 404/10 Permit Requirements

Section 404/10 Application

The content of the Section 404/10 application must be sufficient to allow USACE to begin the permit review process and decide the level of required NEPA documentation. A list of major components of the application includes the following:

- Identification of the proposed action
- Statement of project purpose
- Narrative discussion of project components
- Vicinity maps (identifying the locations of proposed transmission corridors, storage facilities, and treatment facilities)
- Site maps (identifying resources and proposed facility footprints)
- Conceptual drawings of transmission system as well as the delivery point for the raw water (including new water treatment plant or expansion)
- Conceptual engineering of the major facilities and temporary construction areas
- Delineation of and identifying direct impacts to potentially “jurisdictional waters of the United States” for the proposed action (wetlands and streams)
- Identification of other potential direct impacts to the human environment associated with the proposed action (such as cultural resources, sensitive habitat, prime farmlands, and habitable structures)
- Description of possible indirect impacts
- Identification of property owners for both the facility sites and adjacent property owners

NEPA Information Requirements

NEPA requires that federal agencies evaluate their actions, including permit approvals, to determine the effects of that action. If the action is a major federal action significantly affecting the quality of the human environment, documentation must be prepared to assess the impacts of that action and opportunity for public input must be provided. The following are key components of NEPA documents, including an EIS:

- Alternatives analysis: A comparison of reasonable alternatives must be prepared. This must include the comparison of forecast conditions without the federal action (referred to as the “no action alternative”), and additional reasonable alternatives, including the preferred alternative or proposed project. The purpose and need of the project must be satisfied by the reasonable alternatives.
- Impact analyses: Under NEPA, the assessment of impacts to the affected environment is included in the alternatives evaluation. Impacts must be assessed in terms of direct impacts, indirect impacts (resulting from the federal action but which are later in time or farther removed in distance than the federal action), and cumulative impacts (impacts associated with the federal action and other projects that can be reasonably foreseen.)

A key aspect of the permitting master schedule for this project is that sufficient information will be provided in the application so that USACE will be able to determine whether an EA or EIS is the appropriate NEPA documentation. The studies underway have been conducted so that the majority of the analyses will be completed (or essentially completed) prior to commencement of the EA or EIS. Although USACE has the right to accept or reject the information, it is anticipated that preparation of this information will be concurrent with the studies being conducted in compliance with Texas Water Code requirements and will significantly support the permitting effort.

Water Rights Permitting Requirements

The LCRA-SAWS Water Project will require LCRA to obtain water rights amendments, including an interbasin transfer authorization for nearly all of its existing water rights and pending excess flows application. Some general requirements for applications under Chapter 11 of the Texas Water Code and Volume 30 Chapters 295 and 297 of the Texas Administrative Code specific to interbasin transfer requests include the following:

- Maps of proposed facilities
- Off-channel storage facility designs
- Conservation and drought contingency plans
- Hydrological analyses for the proposed project and the system operations approach
- The contract price of the water to be transferred
- A statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category
- The cost of diverting, conveying, distributing and supplying the water to, and treating the water for the proposed users

- Projected effect on user rates and fees for each class of ratepayers

Other prerequisites during the interbasin transfer review and authorization process include:

- General requirements for application notice, hearing, and fees
- At least one public comment meeting in each basin conducted by TCEQ
- Notice mailed to water right holders, county judges, groundwater conservation districts, and others in the basin of origin and published in the newspaper

Status of Permitting Activities

The permitting team is working closely with the various study teams to ensure the data needed will be available. Descriptions of the project components including agricultural conservation measures, groundwater wells, and facilities within the lower Colorado River basin, as well as those delivering, storing, and treating the water for San Antonio/Bexar County are under development. The scope of the studies conducted in 2008 will substantially complete the material needed for permit applications in 2009.

Potential Risks Associated with Permitting

Potential risks exist for permitting a project of this magnitude and complexity, including the following:

- Water rights permitting could be delayed for a variety of reasons, including pending water rights application processes in the basin; substantial legislative changes to the Texas Water Code; potential protests to the LCRA applications; the outcome of statewide water rights issues including processing water rights amendments, environmental flows, or treatment of return flows in permitting; and obtaining simultaneous review and decisions regarding the multiple, complex permit requests associated with this unique project.
- TCEQ has not promulgated detailed rules or guidance on how it interprets and will apply many of the interbasin transfer requirements, increasing the potential for litigation of these issues in the courts.
- Federal and state permit issuance processes could be affected by availability of agency staff to conduct necessary permit reviews as well as potential comments on the project application.
- Uncertainty regarding jurisdictional determination and regulations in light of the 2007 U. S. Supreme Court decision in *Rapanos v. United States* provides a source of risk in the permitting process.
- Statutory changes or changes in groundwater conservation district rules and the formation of a new district in Colorado County could affect permitting of the groundwater system associated with the project. Development of desired future conditions for each district could result in constrained groundwater withdrawal levels needed for the project.