

Water Resources Council (WRC)

October 15, 2020



North Central Texas Council of Governments

Environment
& Development

www.nctcog.org/WaterResources

Procedures for Online Meeting

- ▶ Today's presentation is posted on the WRC website at: <https://www.nctcog.org/envir/committees/water-resources-council>
- ▶ Roll call today in lieu of sign-in sheet.
- ▶ Please state your name and entity you are representing when you ask a question or provide a comment.
- ▶ Please keep your microphone on mute when not speaking.
- ▶ Approval of action items will still be done by a voice vote. Please only vote if you are a member of the WRC.

1. Welcome and Roll Call

New Member Welcome

- Mr. Eric Robison, City of Richardson
- Ms. Sally U. Wright, City of Dallas

Action Item

2. Meeting Summary

The July 1, 2020 meeting summary will be presented for approval.

Presentation

3. U.S. Army Corps of Engineers Regulatory Program - Recent Changes

Chandler J. Peter, Regulatory Specialist
Fort Worth District
U.S. Army Corps of Engineers

Corps Regulatory Program – Recent Changes

North Central Texas Council of
Governments
Water Resources Council
Virtual Meeting
October 15, 2020

Chandler Peter
Technical Specialist
Regulatory Division
Fort Worth District



®

US Army Corps of Engineers
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Program of Change

Navigable Waters Protection Rule (NWPR)

2020 Nationwide Permits

NEPA Regulation Revisions

401 Water Quality Certification Revisions



Waters of the US

Rules, Rules and More Rules

1. Former Rule - 1986 regulations w/ 2000s Rapanos guidance
2. Clean Water Rule - 2015 Obama Rule – repealed 2019.
3. “Step 1 rule (see #1 above w/ minor modifications) – 2019 - 2020
4. Navigable Waters Protection Rule (NWPR) - 2018 Trump Rule – signed 1/2020 – effective 6/22/2020 (except in Colorado)

Currently being challenged by numerous states, Tribes and non-governmental organizations but in effect.



NWPR - Waters of the U.S.

- 33 CFR 328.3

- (a) Jurisdictional waters.

- (1) The territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb & flow of tide;
 - (2) Tributaries;
 - (3) Lakes and ponds as well as impoundments of jurisdictional waters; and
 - (4) Adjacent wetlands.



NWPR – Non-Waters of the U.S.

- 33 CFR 328.3
 - (b) Non-jurisdictional waters.
- (1) Waters or water features that are not identified in paragraphs (a)(1) through (4) of this section;
- (2) **Groundwater**, including groundwater drained through subsurface drainage systems;
- (3) Ephemeral features, including **ephemeral streams**, swales, gullies, rills, and pools;
- (4) Diffuse stormwater **run-off** and directional **sheet flow over upland**;



NWPR – Non-Waters of the U.S.

- (5) **Ditches** that are not paragraph (a)(1) or (2) waters, & those portions of ditches constructed in paragraph (a)(4) waters that do not satisfy conditions of para. (c)(1) Adjacent Wetlands;
- (6) **Prior converted cropland**;
- (7) Artificially **irrigated areas**, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease;
- (8) **Artificial lakes and ponds**, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, **constructed or excavated in upland** or in non-jurisdictional waters, so long as those artificial lakes and ponds are not impoundments of jurisdictional waters that meet conditions of paragraph (c)(6) Lakes, Pond & Impoundments;



NWPR – Non-Waters of the U.S.

- (9) **Water-filled depressions constructed or excavated in upland** or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
- (10) **Stormwater control features constructed or excavated in upland** or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off;
- (11) **Groundwater recharge, water reuse, and wastewater recycling structures**, including detention, retention, and infiltration basins and ponds, constructed or excavated **in upland** or in non-jurisdictional waters; and
- (12) **Waste treatment systems**.



No longer waters



Not waters (never were)





???????

Not obvious



Channelized Non-JD Surface Water



This type of feature includes non-jurisdictional ditches or ephemeral streams which are not themselves jurisdictional but can provide a channelized surface water connection for upstream perennial or intermittent waters in a typical year.



Tributary

- *Tributary* means a river, stream, or similar naturally occurring surface water channel that contributes surface water flow to a water identified in paragraph (a)(1) of this definition in a **typical year** either directly or through one or more waters identified in paragraph (a)(2)-(a)(4) of this definition. A tributary must be perennial or intermittent in a **typical year**.
 - Perennial/intermittent flow continuously during certain times of year and MORE than in direct response to precipitation
 - Ephemeral tributaries flow in DIRECT response to precipitation



Adjacent Wetland

- *Adjacent wetland* means wetlands that:
 - (i) abut, meaning to touch at least at one point or side of, a paragraph (a)(1) through (3) water;
 - (ii) are inundated by flooding from a paragraph (a)(1) through (3) water in a **typical year**;
 - (iii) are physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; or
 - (iv) are physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a **direct hydrologic surface** connection through or over that structure in a **typical year**.



Typical Year

- When precipitation & other climatic variables are within normal periodic range (e.g., seasonally, annually) for geographic area of applicable aquatic resource based on rolling 30-year period
 - Provides a predictable framework to appropriately interpret data when determining the jurisdictional status of certain waterbodies.
 - Applies to some of the requirements for the following categories of waters:
 - (a)(2) -Tributaries;
 - (a)(3) -Lakes and ponds, and impoundments of jurisdictional waters; and
 - (a)(4) -Adjacent wetlands



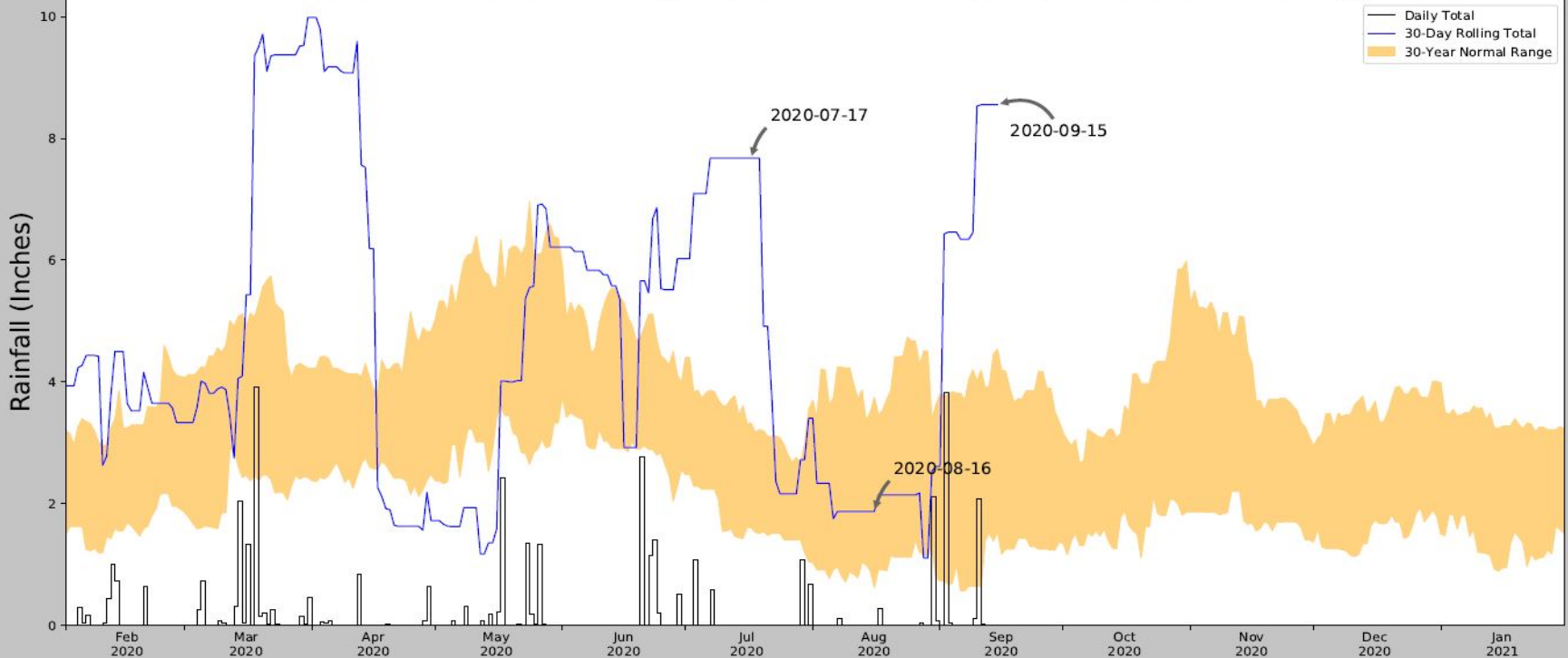
Antecedent Precipitation Tool

- Developed by the Corps.
- Assesses rainfall data from preceding 30 years.
- Automated & provides consistent methodology.
- Includes information from the Web-based Water-Budget Interactive Modeling Program & Palmer Drought Severity Index.
- Uses recommended parameters contained in NWPR's preamble.



Antecedent Precipitation Tool

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	33.396443, -96.739548
Observation Date	2020-09-15
Elevation (ft)	762.4
Drought Index (PDSI)	Mild wetness (2020-08)
WebWIMP H ₂ O Balance	Dry Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2020-09-15	1.539764	4.534252	8.551181	Wet	3	3	9
2020-08-16	0.618504	3.746457	1.870079	Normal	2	2	4
2020-07-17	1.601181	3.322441	7.673229	Wet	3	1	3
Result							Wetter than Normal - 16

Figure and tables made by the Antecedent Precipitation Tool Version 1.0
Written by Jason Deters
U.S. Army Corps of Engineers

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days (Normal)	Days (Antecedent)
FRISCO	33.1925, -96.7931	747.047	14.427	15.353	6.713	11351	90
VAN ALSTYNE 0.5 S	33.4126, -96.5744	790.026	9.591	27.626	4.581	1	0

Application of Typical Year

- In addition to the APT, should also consider:
 - range of climatic variables
 - data available through remote tools, and
 - direct on-site observations.
- **Use professional judgment and a weight of evidence approach when considering precipitation normalcy along with other available data sources.**



Application of Typical Year

- May be applied to determine if a water or feature is not jurisdictional (e.g., an ephemeral stream)
 - Perennial/intermittent flow does not have to occur every year, only in a typical year, w/ some regularity
 - A portion of wetland only has to flood during a typical year 1 time in the assessed period.
- **CAUTION:** Application of typical year to determine adjacent wetland not the same as determining tributary flow status
- Permanent, artificial hydrology sources can effect determination (e.g. wastewater)



2020 Nationwide Permits

- Released for comment 9/15/20
 - Regional conditions being revised for each District
- Proposing to eliminate linear feet from stream impact & use acreage – comments requested
 - Includes eliminating 300 foot limit (NWPs 21, 49 & 50) & waiver requirement w/ agency coordination
- Splitting up NWP 12 into 3 types (water, oil/gas, electric)



2020 Nationwide Permits

- Remove definitions of:
 - Ephemeral stream
 - Intermittent stream
 - Protected tribal resources
- Modify definitions of “ordinary high water mark” & “perennial stream” to be consistent w/ NWPR
- Modify definition of “loss of waters of the US” to remove references to quantifying stream bed losses in linear feet



Transitioning to 2020 NWP

- Current NWPs expire March 18, 2022
 - This date may change, depending on when 2020 NWPs are issued & go into effect
- Grandfathering provision at 33 CFR 330.6(b)
 - If activity qualifies under reissued/modified 2020 NWP, original NWP verification letter will continue to be valid under March 18, 2022, unless DE identified a different expiration date in verification letter
 - If activity does not qualify under reissued/modified 2020 NWP, project proponent would have 12 months to complete authorized activity as long as activity is under construction or under contract to commence construction before reissued or modified NWP goes into effect



NEPA Regulation Revisions

- Actions involving Environmental Assessment must be completed in 1 year or receive extension from ASA-CW
 - This applies to normal Standard Individual Permits and Letters of Permission
- Actions involving Environmental Impact Statements must be completed in 2 years or receive extension from ASA-CW
- Applies to subsequent actions under Regional EIS completed by SWF for coal mining



401 Water Quality Certification

- EPA issued new regulations effective 9/11/20
- Entities must request pre-filing meeting w/ TCEQ
 - 30 day time limit to hold meeting
- After pre-filing efforts, copy of WQC request to be provided to TCEQ & permit/license agency
- Corps to establish “reasonable time” for WQC decision to be rendered or considered waived



401 Water Quality Certification

- After receipt of 401, Corps must notify EPA within 5 days for neighboring jurisdiction review
- Corps to enforce 401 WQC conditions
- Any questions concerning process, information and data needs should be directed to TCEQ



Corps Regulatory Program Information

- *National Regulatory Program Home Page:*
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>
- *Fort Worth District Regulatory Home Page:*
<https://www.swf.usace.army.mil/Missions/Regulatory>
- Fort Worth District (817) 886-1731 – Regulator of the Day

- *If this program assisted you, please help us improve our services by completing the survey on the following website:* <http://per2.nwp.usace.army.mil/survey.html>



Questions?



Discussion

4. FY2021 Water Resources Council Membership

- a. FY2021 WRC roster and structure available on WRC website here:

<https://www.nctcog.org/envir/committees/water-resources-council>

- b. New terms began on October 1, 2020 and expire on September 30, 2022.

Discussion

5. Draft 2021 Water Resources Questionnaire

The WRC is asked for input on the topics, format, and questions for the 2021 questionnaire.

A draft questionnaire is available for review and to assist with discussion.

Discussion

6. Water Resources Education and Outreach

WRC input is requested in two areas:

- 1) Webinar Topics and/or Speakers

- 2) Outreach during FY2021
 - a. Public Service Announcement?
 - b. Social media posts or toolkit?

Other Business and Roundtable Discussion

7. NCTCOG Updates

- a. Final [2020 Water Quality Management Plan](#) approved by NCTCOG's Executive Board and TCEQ.

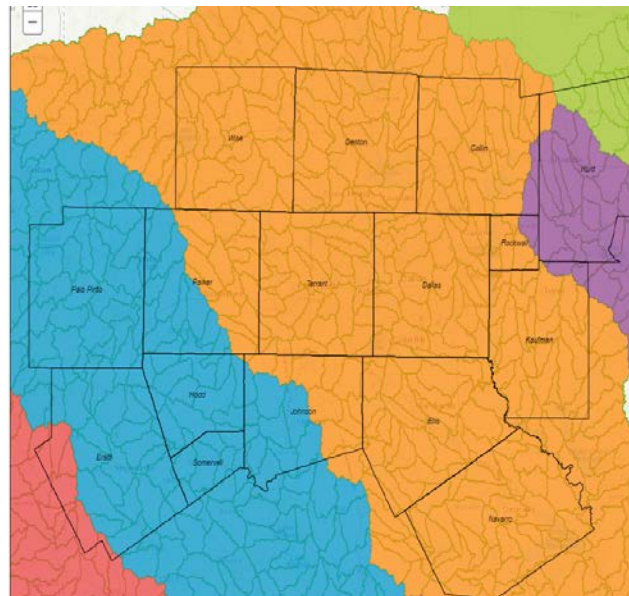
2020 Update to the North Central Texas Water Quality Management Plan

The North Central Texas Council of Governments
August 25, 2020

The North Central Texas Council of Governments (NCTCOG), as the designated water quality planning agency for the North Central Texas area, is responsible for developing the regional Water Quality Management Plan (WQMP).

Since developing the first WQMP in 1975, the NCTCOG 16-county region has grown by 4.97 million people. The historical population growth and projected growth has required and will continue to require water resources planning to address water quality, wastewater capacity, and water supply needs. The WQMP provides data and information regarding potential needs and priorities for improving water quality and continuing regional efforts to meet wastewater capacity needs for the expanding population.

The NCTCOG region is composed of over 330 sub-watersheds that include a myriad of diverse land uses working to support the growing population of the NCTCOG region (see map on right). Entities across North Texas work to maintain and improve water resources with the development of management plans to meet future needs.



Other Business and Roundtable Discussion

7. NCTCOG Updates

- b. WQMP Subcommittee Meeting on November 17, 2020.
- c. Water for North Texas Resource Library.
- d. U.S. EPA Trash Free Waters Grant.
- e. 2020 Holiday Grease Roundup.

November 23, 2020 to January 4, 2021. Contact Hannah Allen, NCTCOG, at hallen@nctcog.org for more information.

Other Business and Roundtable Discussion

7. NCTCOG Updates

- f. Wastewater and Treatment Education Roundtable (WATER)
 - i. Accepting commitments online [here](#) for FY2021
 - ii. Next meeting on December 8, 2020 at 10:00 a.m.
 - iii. Simple Life Cycle of Drinking Water Educational and Explainer Video

Other Business and Roundtable Discussion

8. Future Agenda Items

The WRC can request future agenda items.

9. Roundtable

The WRC is invited to share what is happening in their communities.

Other Business and Roundtable Discussion

10. Schedule for the next meeting

The next WRC meeting is scheduled for:

Wednesday, January 13, 2021

Location: TBD

11. Adjournment

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