

# Water Rights Permitting Process

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# Ubiquitous . . .

“Present in all places at all times.”

# What is state water?

- The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, flood water, and rain water of every river, natural stream, canyon, ravine, depression and watershed in the state . . . – Tex. Water Code § 11.021(a)
- Permit = usufructory interest

# What information is required?

- Source of supply, amount, purpose of diversion, use
- Location of diversion point and rate
- Water conservation and drought contingency plan
- Consistency with water plans

# Exemptions?

. . . Few and Far Between

- D & L use
- Wildlife management
- Emergency use
- Mariculture, petroleum, etc.

# What happens in the application process?

- Administrative review
- Notice of application/ request for hearing
- Technical review
- Draft permit
- Contested case hearing?

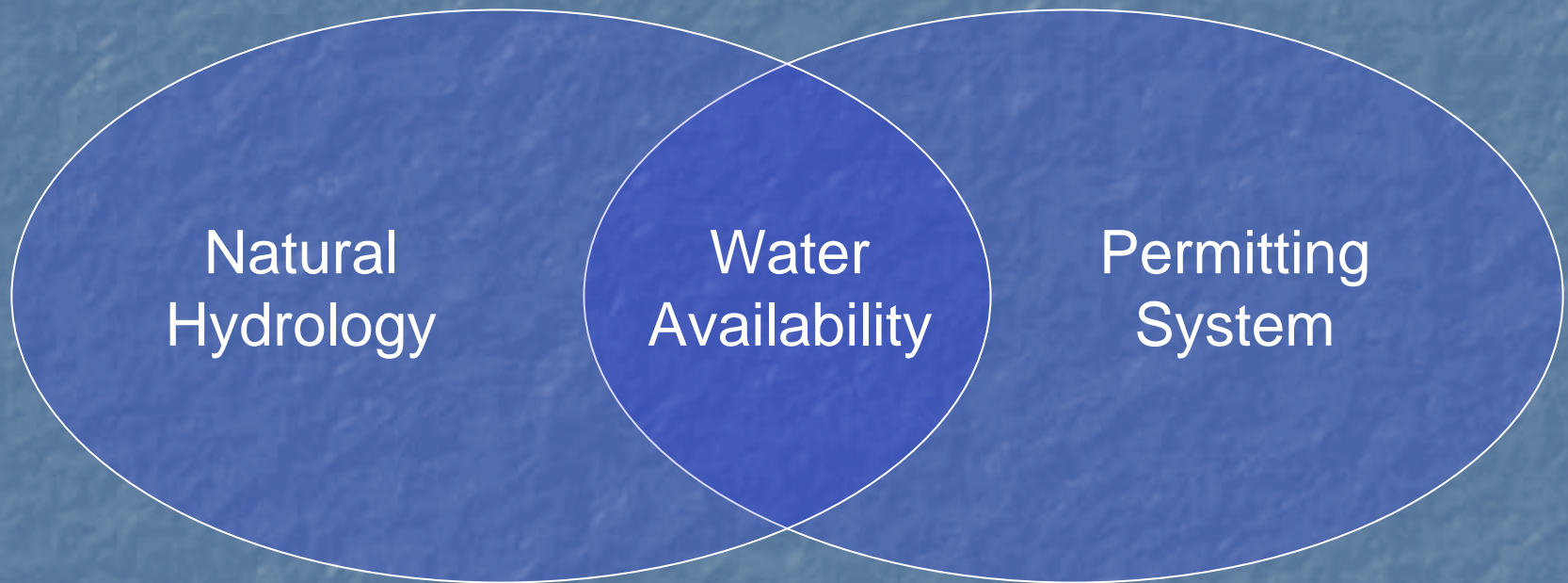
Back to ubiquitous . . .

. . . present in all places and at all times?

# What factors affect availability?

- Rule of Prior Appropriation
- Environmental Flows -- Instream and B&E
- Subordination and Inter-Regional Agreements to Circumvent Priority Order

# Permits do not guarantee water availability



The state can issue permits that have less than 100% expected reliability.

# Application to Transport Water

## Bed and Banks applications

- Discharge and diversion points
- Carriage losses
- Water quality

# Hot Topic: Bed & Banks for Return Flows

- Discharger's interest
- Downstream senior water rights
- Proof of historical reliance
- TCEQ assignment of a new priority date
- Legislative fixes
- Specialized local agreements

# Hot Topic: Environmental Flow Re-Opener

“This special condition is subject to adjustment and amendment by the commission at any time, if the commission determines, through an expedited public review process, that such adjustment is appropriate to achieve compliance with applicable environmental flow standards in accordance with Texas Water Code §11.147(e-1).”