

**TO:** Board Members

**THROUGH:** Carolyn L. Brittin, Deputy Executive Administrator,  
Water Resources Planning and Information

Ken Petersen, General Counsel  
Legal Services

David Carter, Agency Contract Administrator  
Contracting and Purchasing

Dan Hardin, Director, Water Resources Planning

Matt Nelson, Manager, Regional Water Planning

**FROM:** Temple McKinnon, Regional Water Planning

**DATE:** April 11, 2012

**SUBJECT:** Adoption and Repeal of Rules for Regional Water Planning Grants,  
Regional Water Planning, and State Water Plan Development.

## **ACTION REQUESTED**

Consider authorizing: (a) publication of proposed repeal of 31 Texas Administrative Code (TAC) Chapter 355, Subchapter C relating to Regional Planning Grants; 31 TAC Chapter 357 relating to Regional Water Planning Guidelines; and 31 TAC Chapter 358, Subchapter A relating to State Water Plan Development; and (b) publication of proposed 31 TAC Chapter 355, Subchapter C relating to Regional Planning Grants; 31 TAC Chapter 357 relating to Regional Water Planning; and 31 TAC Chapter 358, Subchapter A relating to State Water Plan Development for adoption.

## **BACKGROUND**

In October 2011, the Board's Work Session included a briefing on the stakeholder process to revise, adopt, and repeal the associated state and regional water planning rules contained in 31 Texas Administrative Code (TAC) Chapters 355, 357, and 358. Texas Water Code §16.051(d) requires the Board to coordinate with the Texas Commission on Environmental Quality (TCEQ),

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the Texas Department of Agriculture (TDA), and the Texas Parks and Wildlife Department (TPWD) to review its administrative rules for regional and state water planning (31 TAC 357 and 358, respectively) at least every five years. As part of the required five-year review of 31 TAC Chapters 357 and 358, Chapter 355, Subchapter C was reviewed for any updates required by statutory changes or opportunities to clarify language. The rules contained in 31 TAC Chapter 355, Subchapter C govern the procedures for regional water planning groups to receive funds from the Board's Research and Planning Fund for the regional water planning process.

A preliminary step in developing the proposed draft Chapter 357, was a pre-publication draft rule revision document distributed to all voting members of regional water planning groups (RWPGs), representatives of RWPG-designated political subdivisions, state and federal agencies, consultants involved in regional water planning, and representatives of numerous organizations with interests in water. Meetings on the proposed rule revision were held with TCEQ, TDA, and TPWD and conference calls with the RWPG Chairs. Comments on the pre-publication draft were received by February 16, 2012 and the proposed Chapter 357 was modified based on comments received.

## **KEY ISSUES**

### **31 TAC Chapter 355, Subchapter C:**

Significant proposed changes to this subchapter include the following topics:

- The requirement, where appropriate, that RWPGs use the TCEQ's environmental flow standards adopted through the Bay-Basin Stakeholder Process, consistent with the proposed revisions in 31 TAC Chapters 357 and 358.
- Moving the notice requirements associated with regional water planning grants into 31 TAC Chapter 357 to consolidate all notice requirements associated with the five year regional water planning cycle administered by the Board. The 31 TAC Chapter 355 rule content regarding funding applications references the notice requirements in 31 TAC Chapter 357.
- Other changes to this subchapter included consolidating some sections and rewriting the existing requirements for clarity and ease of use.

### **31 TAC Chapter 357:**

Significant proposed changes to this chapter include the following topics:

- Definitions were added to clarify existing regional water planning terminology and requirements.
- The identification of droughts of record was added to the requirements of describing the regional water planning areas in the regional water plans.
- The notice requirements throughout Chapters 355 and 357 and 358 were placed in one section to improve ease of use.
- The requirements for a secondary needs analysis following the application of conservation and direct reuse water management strategies and an overall planning safety

factor analysis were added. These analyses are current requirements in the regional water planning contracts that were developed in response to previous coordination with the U.S. Army Corps of Engineers reflecting their permit evaluation analyses.

- The requirement, where appropriate, that RWPGs use the TCEQ's environmental flow standards adopted through the Bay-Basin Stakeholder Process.
- All existing drought-related content was consolidated into one section of the rules, and will be reported as a chapter in the regional water plans, to facilitate retrieving related information during the onset of droughts and in emergency situations. In response to stakeholder comments, new drought-related requirements were added to the existing content. These include alternative supply analyses for certain sole-source entities and clarifying that RWPGs develop recommendations for drought management rather than simply summarize existing drought contingency plan content.
- A requirement was added for a section in the regional water plan that would provide a comparison to the previous regional water plan. The content of this section would largely be supported by data summaries provided by the Board.
- The addition of new statutory requirements from SB 660 (82<sup>nd</sup> Legislative Session) were added
  - regarding groundwater management area interest group voting membership,
  - regarding regional water plan consistency with the desired future conditions as of the previously adopted state water plan, and
  - that the Board may obtain project implementation information from the regional water plan groups.
- The guidance principles from Chapters 357 and 358 were consolidated into Chapter 358 and are referenced in Chapter 357.

Additional changes include a reorganization and rewrite of the existing Chapter 357.

### **31 TAC Chapter 358, Subchapter A:**

Significant proposed changes to this chapter include the following topics:

- The guidance principles from Chapters 357 and 358 were consolidated into Chapter 358 and are referenced in Chapter 357.
- The requirement, where appropriate, that RWPGs use the TCEQ's environmental flow standards adopted through the Bay-Basin Stakeholder Process.
- New statutory requirements were added from the 82<sup>nd</sup> Legislative Session requiring an evaluation of the state's progress in meeting future water needs, including the implementation of water management strategies since the previous state water plan.

If authorized by the Board, staff will publish the proposed rule revisions in the Texas Register for public comments. After completing the comment period, staff will make any necessary revisions to address public comments as appropriate and anticipates presenting a Board item for final rules adoption at the July 2012 meeting of the Board.

**RECOMMENDATION**

Staff recommends authorizing of the publication of the proposed repeals and proposed rules in the Texas Register.

**CERTIFICATION**

This recommendation has been reviewed by legal counsel and is in compliance with applicable statutes and Board rules.

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Ingrid K. Hansen, Deputy General Counsel

- Attachment A:** Preamble for Adoption, 31 TAC Chapter 355, Subchapter C and Proposed Rule
- Attachment B:** Preamble for Repeal, 31 TAC Chapter 355, Subchapter C
- Attachment C:** Preamble for Adoption, 31 TAC Chapter 357 and Proposed Index and Rule
- Attachment D:** Preamble for Repeal, 31 TAC Chapter 357
- Attachment E:** Preamble for Adoption, 31 TAC Chapter 358, Subchapter A and Proposed Rule
- Attachment F:** Preamble for Repeal, 31 TAC Chapter 358, Subchapter A

## **ATTACHMENT A**

**Preamble for Adoption, 31 TAC Chapter 355, Subchapter C and  
Proposed Rule**

TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 355. Research and Planning Fund  
Subchapter C. Regional Water Planning Grants

The Texas Water Development Board (board) proposes for adoption new subchapter C relating to regional water planning grants. The board has substantially revised this proposed new subchapter primarily to eliminate redundant or unneeded sections and to re-organize the subchapter for clarity and ease of use. In today's *Texas Register*, the board is proposing to repeal current subchapter C which will be replaced with this proposed new subchapter.

The proposed new subchapter governs the procedures for applications for and uses of grant funds for regional water planning. This subchapter is based on the authority granted in Tex. Water Code <\*>15.4061 relating to funding for regional water plans. That section authorizes the board to adopt rules establishing criteria for eligibility for regional water planning money from the research and planning fund. These rules describe the criteria for eligibility and provide notice to eligible applicants about the procedures for applying for and receiving money.

Proposed new <\*> 355.90 relating to applicability and definitions limits the applicability of the subchapter to development and revision of regional water plans in proposed subsection (a). Proposed subsection (b) contains definitions used in the subchapter, and there are no substantive changes from the previous definitions. Pursuant to Tex. Water Code <\*>15.4061(a), the board may contract only with a political subdivision to provide funds for regional planning so political subdivision is defined in proposed (b)(5).

Proposed new <\*> 355.91 relating to notice of funds and submission and review of applications describes the board's procedures for providing public notice of the availability of regional planning funds in proposed subsection (a). Proposed subsection (b) requires the regional water planning groups to provide a written designation of a political subdivision authorized to apply for and administer the grant funds for the planning group. This designation is a prerequisite to applying for funds as is filing a copy of the planning group's by-laws with the board pursuant to proposed subsections (a) and (b). Proposed subsection (c) requires the regional water planning groups to provide public notice about the request for board funds. Proposed subsection (d) states that the board may request clarifications from the regional water planning groups and also provides notice to the planning groups that the board may reject incomplete applications and that, depending on availability of funds, a group may re-apply after the initial funding for more money for unfunded tasks. Proposed subsection (e) contains the evaluation criteria that the board will use to judge the merits of the applications for funding. Proposed subsection (e) is required by Tex. Water Code <\*>15.4061(f) which requires the board to adopt rules establishing criteria for eligibility for regional water planning grants.

Proposed new <\*>355.92 relating to use of funds provides notice that funding decisions are solely within the board's discretion in proposed subsection (a) and also states that the items listed in proposed subsection (a)(1) through (a)(5) are not eligible for funding. Proposed subsection (b)

allows funding for the certain administrative costs listed in (b)(1) through (b)(4). The tasks and activities not eligible for funding are based upon statutory prohibitions in Tex. Water Code <\*>15.4061(g). Proposed subsection (c) clarifies that the planning groups may contract for professional services, but only through the procedures in Tex. Gov't Code, chapter 2254. Proposed subsection (d) discusses funding for analyses of the costs and benefits of water management strategies and remains unchanged from the current subchapter.

Proposed new <\*>355.93 relating to board consideration of applications, applicant's responsibilities and contract describes the manner in which the board will receive information about the applications and explains that the board will provide the applicants with notice of the time and place the applications will be considered and provides the board's Web site address in proposed subsection (a). Proposed subsection (b) notes the board's broad discretion in deciding to fund the applications and provides notice to the applicants that the board's approval contains a deadline for contracting with the board. Proposed subsection (c) provides that the board may provide up to 100% of the costs to develop or revise a regional water plan. Finally, subsection (d) contains the minimum requirements of a contract for planning funds.

This proposed rulemaking affects Tex. Water Code <\*>15.4061 and these rules are adopted pursuant to the rulemaking authority in <\*>15.4061(f).

These proposed rules have been reviewed by legal counsel and have been found to be within the board's authority.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any additional estimated costs to state and local governments as a result of enforcing or administering the rule for the first five years these rules will be in effect. Although eligible applicants must be political subdivisions, no political subdivision is required to apply on behalf of a regional water planning group. The political subdivision in the role of eligible applicants have consented to assist the regional water planning groups in applying for and administering regional planning funds.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. These rules require political subdivisions that voluntarily choose to assist regional water planning groups to perform certain administrative tasks, not all of which are reimbursable. The minor added costs of performing these functions will not reduce costs to the local governments.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering these rules for the first five years that these rules will be in effect. These proposed rules do not affect the revenues of state or local governments.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that these rules do not impose costs to the public as the political subdivisions who are eligible applicants already perform similar functions, i.e. contract management and procurement activities, as part of their

regular business. The benefit to the public is that regional water planning groups do not have to spend state grant funds to administer the state grants. Additionally, these rules provide a public benefit through improved clarity and elimination of unnecessary rules that will assist the public in understanding the funding of regional water planning activities throughout the state. These public benefits will be effective for the first five years the rules are in effect.

Ms. Brittin has also determined that there are no probable economic costs to persons required to comply with these rules. The regional water planning groups are not required to apply for funds for planning and the political subdivisions who act on behalf of the planning groups are not required to accept a designation to perform the administrative functions required by these rules.

Ms. Brittin has determined that these rules do not constitute a major environmental rule because they are not based on a standard set by federal law, do not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and are adopted pursuant to express state laws under Tex. Water Code, chapter 15.

Ms. Brittin has determined that these rules do not impact private property because the rule is directed to regional water planning groups and the political subdivision that acts as the administrator of grant funds from the board and is not directed to private landowners. The rules do not affect private property because it does not authorize any governmental entity to regulate or affect the status of private property. The rules regulate only the distribution of funds from the board's research and planning fund.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 475-2053.



TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 355. Research and Planning Fund  
Subchapter C. Regional Water Planning Grants

**§355.90. Applicability and Definitions**

- (a) This subchapter applies to grant funds for the development and revision of regional water plans.
- (b) The following words and acronyms, used in this subchapter, have the following meanings:
  - (1) Board – The Texas Water Development Board.
  - (2) Commission – The Texas Commission on Environmental Quality.
  - (3) Eligible applicant - A political subdivision designated by the regional water planning group and authorized to receive funds for developing or revising regional water plans.
  - (4) Executive administrator (EA) - The executive administrator of the Board or a designated representative.
  - (5) Political subdivision - City, county, district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code, §67 (relating to Nonprofit Water Supply or Sewer Service Corporations).
  - (6) Regional water plan - A plan or an amendment to an adopted regional water plan developed by a regional water planning group for a regional water planning area pursuant to the Texas Water Code, §16.053 (relating to Regional Water Plans).
  - (7) Regional water planning area - A geographical area designated and defined by the Board pursuant to the Texas Water Code, §16.053.
  - (8) Regional water planning group (RWPG) - A group designated by the Board that develops a regional water plan, pursuant to the Texas Water Code, §16.053.
  - (9) State environmental planning criteria - Criteria adopted by the Board for inclusion in the state water plan; the criteria are developed through coordination with the Commission and the Texas Parks and Wildlife Department and used for evaluating the feasibility of water management strategies in a regional water plan when the RWPG lacks information from site specific studies. The environmental planning criteria are listed in Chapter 357 of this title and also include the Commission's environmental flows standards at 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water).
  - (10) State population and demand projections - Population and water demand projections contained in the state water plan or adopted by the Board after consultation with the Commission, the Texas Department of Agriculture, the Texas Parks and Wildlife Department, and RWPGs in preparation for revision of the state water plan.
  - (11) State water plan - The most recent state water plan adopted by the Board under the Texas Water Code, § 16.051 (relating to State Water Plan).

### **§355.91. Notice of Funds and Submission and Review of Applications**

- (a) The EA will publish notice in the Texas Register advising RWPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop a scope of work or to develop or revise regional water plans. The notice will describe the form and manner for applications. A RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted by-laws.
- (b) The RWPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RWPG. The RWPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement and enter into the contracts necessary for regional planning.
- (c) The RWPG shall provide notice that an application for funding is being submitted in accordance with §357.21(d) of this title (relating to Notice and Public Participation).
- (d) The EA may request clarification from the RWPG if necessary to evaluate the application. Incomplete application may be rejected and returned to the applicant. After the initial round of planning grant funds, an eligible applicant may submit additional applications for tasks not previously funded. The EA may fund additional applications under this subchapter, but is not required to provide such additional funding.
- (e) The applications shall be evaluated by the following criteria:
  - (1) degree to which proposed planning does not duplicate previous or ongoing planning;
  - (2) project organization and budget;
  - (3) scope of work of project;
  - (4) eligibility of tasks for funding under this subchapter;
  - (5) the relative need of the political subdivision for the money based upon an assessment of the necessary scope of work and cost to develop the regional water plan as compared to statewide needs for development of all regional water plans;
  - (6) the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and
  - (7) the degree to which regional water planning by the political subdivision will address the water supply needs in the regional water planning area.

### **§355.92. Use of Funds**

- (a) Limitations of Funding. The Board has sole discretion in determining which activities are necessary for the development or revision of regional water plans. However, no funds will be provided for the following:
  - (1) activities for which the Board determines existing information or data is sufficient for the planning effort including:
    - (A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;
    - (B) evaluations of groundwater resources for which a desired future condition has been submitted to the Board pursuant to Texas Water Code, §36.108(d) (relating to Joint Planning in a Management Area);
    - (C) evaluations of groundwater resources for which current information is available from the Board or other entity sufficient for evaluation of the resource;

- (D) determination of water savings resulting from standard conservation practices for which current information is available from the Board;
  - (E) revision of the adopted state population and demand projections;
  - (F) revision of state environmental planning criteria for new surface water supply projects; and
  - (G) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;
- (2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;
  - (3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;
  - (4) costs associated with administration of the plan's development, including but not limited to:
    - (A) compensation for the time or expenses of RWPGs members' service on or for the RWPG;
    - (B) costs of administering the RWPGs;
    - (C) costs of public notice and meetings, including time and expenses for attendance at such meetings;
    - (D) costs for training;
    - (E) costs of reviewing products developed due to this grant; and
    - (F) costs of administering the regional water planning grant and associated contracts; and
  - (5) analyses of benefits and costs of water management strategies unless the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by section 357.34 of this title, and the RWPG demonstrates to the satisfaction of the executive administrator that these analyses are needed to determine the selection of the water management strategy.
- (b) **Funding Administrative Costs.** The following administrative costs are eligible for funding if the RWPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:
- (1) travel expenses, as authorized by the General Appropriations Act, for RWPG voting members who certify that they are not eligible for reimbursement from their employer; travel expenses are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the EA;
  - (2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RWPGs and certified by the chairperson;
  - (3) direct costs, not including personnel costs, for placing public notices in newspapers for the legally required public hearings and of providing copies of information for members of the RWPGs as needed for the efficient performance of their work; and
  - (4) the cost of postage for mailing notices of public hearings and other actions to persons and entities listed in 31 Texas Administrative Code Chapter 357, relating to Regional Water Planning Guidelines.
- (c) **Subcontracting.** A RWPG through the eligible applicant's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if such services are procured

on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Government Code Chapter 2254.

- (d) Notwithstanding limitations on funding described in the section, the EA may, in his sole discretion, authorize funding for a cost benefit analysis of water management strategies. The EA shall consider funding such an analysis when the strategies serve the same demand, but the costs and benefits differ significantly among the strategies. The EA shall consider the overarching benefits to the state when determining whether to provide such funding. The EA may provide cost benefit analysis in other situations, as he deems necessary and appropriate.

**§355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract**

- (a) The EA shall submit a summary of applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicant and other persons who have provided comments of the time and place of such meeting. The Board agenda is published on the Web site at [www.twdb.texas.gov](http://www.twdb.texas.gov)
- (b) Board Review. The Board has discretion to approve, disapprove, amend, or continue consideration of an application. If the Board approves the application, then the eligible applicant will be notified of the amount of funds available and about the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The applicant may request an extension of time for good cause shown prior to the contract execution deadline.
- (c) Eligible Applicant's Responsibility. The eligible applicant must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.
- (d) A contract for regional planning funds shall include:
  - (1) a detailed statement of the purpose for which the money is to be used;
  - (2) the total amount of money to be paid from the research and planning fund under the contract;
  - (3) the time for completion; and
  - (4) any other terms and conditions required by the EA or agreed to by the contracting parties.

## **ATTACHMENT B**

Preamble for Repeal, 31 TAC Chapter 355, Subchapter C

TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 355. Research and Planning Fund  
Subchapter C. Regional Water Planning Grants

The Texas Water Development Board (TWDB) proposes for repeal 31 TAC Chapter 355, Subchapter C relating to Regional Water Planning Grants. Subchapter C is proposed for repeal because the TWDB is proposing for adoption a new Subchapter C in today's issue of the *Texas Register*.

Current Subchapter C requires updating to achieve a more streamlined process and to maintain consistency with new substantive rules relating to regional water planning. Today's *Texas Register* also contains proposed new Chapter 357 relating to regional water planning and proposed new Chapter 358 relating to state water planning. Additionally, current Subchapter C is repetitive and will be more user friendly when revised and reorganized.

Chapter 355, Subchapter C contains procedural requirements for the regional water planning groups to apply for grants, made available through legislative appropriation, for regional water planning activities. These funds are appropriated to the TWDB's research and planning fund. The subchapter also delineates allowable uses of the grant funds.

Current <\*> 355.90 contains a general statement of the subject matter of the rules. Current <\*>355.91 contains definitions used in the subchapter. Current <\*>355.92 describes the general process for the TWDB's notice of available funds and the submission of applications by eligible applicants. Current <\*>355.93 contains a description of the types of activities that are eligible for funding and a general statement that the grants may be used to develop a scope of work or to develop or revise the regional water plans. The section also contains a list of specific activities which are generally not eligible for funding, including some administrative costs. Finally, the section required that a regional water planning group have adopted bylaws to be eligible for receipt of grant funds. Current <\*>355.94 provides criteria by which the TWDB will evaluate applications for planning grants. Current <\*>355.95 outlines the TWDB's internal process for submitting applications to its Board. Current <\*>355.96 specifies the actions the Board may take when reviewing applications.

Current <\*>355.97 requires eligible applicants to provide public notice about its intent to apply for planning grant funds; the notice shall provide a description of the purposes of the planning project and an opportunity for the public to comment on the proposed application. Current <\*>355.98 details the TWDB's internal process for contracts for planning grants and current <\*>355.99 specifically authorized the Board to provide up to 100% of the funds requested in an application for the development or revision of a regional water plan.

Current <\*>355.100 states that the TWDB shall make all reports, planning documents and other work products produced with TWDB grant funds available to certain state agencies and public libraries.

These rules affect Tex. Water Code <\*>15.4061 relating to funding for regional water plans.

This proposed repeal of chapter 355, subchapter C has been reviewed by legal counsel who has found that the repeal is within the TWDB's legal authority.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there is no fiscal impact to state or local governments as a result of this proposed repeal particularly since these rules will be revised and proposed for adoption simultaneously with this repeal.

Ms. Carolyn Brittin, Deputy Executive Administrator has determined that there are public benefits to repealing this subchapter because the proposed new subchapter will be more streamlined and reduce the time needed by eligible applicants and the public to understand and use the rules. Ms. Brittin has also determined there are no increased costs to the public or the eligible applicants resulting from the repeal of this subchapter. Additionally, Ms. Brittin has determined that there are not economic costs to persons required to comply with the rules since the rules are not mandatory.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 475-2053.

## **ATTACHMENT C**

**Preamble for Adoption, 31 TAC Chapter 357 and Proposed  
Index and Rule**



TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT board  
Chapter 357. Regional Water Planning

The Texas Water Development Board (board) proposes new chapter 357 relating to regional water planning. This proposed new chapter replaces current chapter 357 in its entirety. Current chapter 357 is being proposed for repeal in today's *Texas Register*. This proposed new chapter contains the substantive changes discussed below in each section. The proposed new chapter is prompted, in part, by statutory changes. The board was subject to Sunset Commission review resulting in the enactment of the board's reauthorization bill, SB 660. Rules changes arising out of enactments from the 82<sup>nd</sup> Legislature include: (1) a requirement that regional water planning groups have a member representing groundwater conservation districts through the selection of one representative of a district located in the groundwater management area of the regional water planning area. Tex. Water Code <\*> 16.053(c) and <\*>357.11(d)(12) ; (2) a requirement that the regional water plan to be consistent with the desired future conditions adopted for the relevant aquifers in the planning area. Tex. Water Code <\*>16.053(e)(2-a) and <\*>357.10(a)(7); this requirement acknowledges the time lag between the adoption of the regional water plans and the desired future conditions and authorizes, but does not require, the planning group to select a date for consistency with the desired future conditions subsequent to the adoption of the most recent state water plan; a requirement that planning groups evaluate the state's progress in meeting future water needs. Tex. Water Code <\*> 16.051(a-1), (a-2) and <\*> 357.45.

This proposed new chapter re-organizes the materials so that rules are arranged to reflect the sequential steps in the planning process. Thus the planning process is more transparent as the

regional water planning groups conduct their work in generally the order reflected by the rules and the rules are more logical as they follow the order of work by the planning groups, including the necessary steps for development, adoption and amendment of a plan. Another benefit of reorganizing the rules is the consolidation of the public hearing and notice requirements in <\*> 357.21; in the current chapter these requirements are intermingled with substantive rules and are now in one place. Finally, the proposed new chapter contains a new directive relating to the format of the regional water plans including requiring each topic be presented as a separate chapter in the regional water plan <\*>357.22(b). This format requirement and other format requirements, discussed in the section descriptions below, make the regional water plans easier to use and to evaluate.

#### Subchapter A. General Information

Proposed new <\*> 357.10 relating to definitions and acronyms contains definitions, not previously part of chapter 357, for the following terms: alternative water management strategy, availability, collective reporting unit, commission, conflict between regional water plan and a groundwater management plan, consistency between a regional water plan and a desired future condition, county-other, drought contingency plan, drought management measures, existing water supply, firm yield, interbasin transfer of surface water, interregional conflict, intra-regional conflict, initially prepared plan, regional water planning area (RWPA), regional water planning group (RWPG), safe yield, state drought preparedness plan, state drought response plan, water conservation measures, water conservation plan, water management strategy, and water user group (WUG). Many of these terms were defined in other portions of the current chapter and

were consolidated under definitions for ease of use. This proposed new section also contains acronyms which are used through-out the chapter.

Proposed new <\*> 357.11 relating to designations mirrors the statutory requirements relating to designation of regional water planning areas (RWPA) which are reviewed every five years as described in subsection (a). Proposed subsection (b) identifies the factors to be used in delineating the RWPA. Proposed subsection (c) describes the procedures required for formation of a regional water planning group (RWPG) including adoption of by-laws with certain required contents. Proposed subsection (d) lists the membership requirements for each RWPG, including new subsection (d)(12) relating to a representative from a groundwater management area.

Proposed subsection (e) lists the non-voting members and subsection (f) requires the RWPG to submit the membership list to the board's Executive Administrator (EA). Proposed subsection (g) provides the RWPG with the discretion to add to the voting and non-voting members to ensure that relevant interests in the RWPA are represented in the planning process. Proposed subsection (h) allows the RWPG discretion in removing members from the RWPG. Proposed subsection (i) authorizes the RWPG to enter into any type of agreement necessary to facilitate and expedite the planning process. Proposed subsection (j) provides notice that the EA will provide technical assistance to the RWPGs.

Proposed new <\*>357.12 relating to general regional planning group responsibilities and procedures includes subsection (a) references the public participation requirements of proposed new <\*>357.21 prior to preparation of regional water plans and also describes the essential pre-planning tasks. Proposed new subsection (b) requires RWPGs to document the processes used in

identifying potentially feasible water management strategies, and to develop those strategies pursuant to that process, which includes holding a public meeting on the proposed process. Proposed subsection (c) allows certain groups that meet the criteria identified in that subsection to engage in simplified planning.

#### Subchapter B. Guidance Principles and Notice Requirements

Proposed new <\*> 357.20 is a reference to the guidance principles for state and regional water planning set forth in proposed new <\*>358.3, also being proposed for adoption in today's *Texas Register*. The guidance principles are required to be adopted as rules pursuant to Tex. Water Code <\*>16.051(d).

Proposed new <\*>357.21 relating to notice and public participation describes all required public participation and notices relating to the regional water planning process according to the various statutory requirements in Tex. Water Code, chapter 16 relating to public participation in the regional water planning process and also includes public notice relating to applications for planning grants pursuant to Tex. Water Code <\*>15.4061 and the proposed new 31 TAC chapter 355, subchapter C. This section delineates the various requirements for notice, method of providing notice, persons who must receive notice, and the types of actions requiring public notice. Proposed subsection (a) requires RWPGs to conduct all business in meetings pursuant to the Texas Open Meeting Act, Government Code, chapter 551 The purpose of these requirements are to ensure the public has sufficient time to review and comment on documents that may be lengthy or complicated. Proposed subsection (b) describes the minimum requirements for public notices from the RWPGs including seventy-two hours notice, the contents of the notice, the

entities to be specifically notified, posting of the notice and agenda and other methods for making the notice and agenda accessible. Proposed subsection (c) describes the notice requirements for specified action, i.e. requests to the board revise population or water demand projections, substitution of alternative water management strategies and minor amendments to regional water plans (RWPs). This proposed subsection contains the same types of information regarding notice, contents of notice, entities to be identified and other items contained in subsection (b).

Each subsection in this section contains the similar information specific to the pending action that is the subject of the notice. Thus, proposed subsection (d) contains all requirements for notices and public participation relating to a preplanning meeting, major amendments to a RWP, hearings on an initially prepared plan, and requests to the board for research and planning funds pursuant to 31 TAC chapter 355, subchapter C which is also being proposed for adoption in today's *Texas Register*. The public participation requirements of this proposed <\*>357.21 describe the public comment periods for certain documents and actions and also provide the RWPGs with the alternative of increasing the use of electronic communications to disseminate the information to the public. Finally, the requirements of this section are the same as the Open Meetings Act because the Legislature prescribed the public notice requirements in Tex. Water Code <\*> 16.053(h)(8), (h)(9) specifically for the regional water planning process.

Proposed new <\*> 357.22 relating to general considerations for development of regional water plans requires the planning groups to consider existing information, which is specifically listed, in developing regional water plans under proposed subsection (a). Proposed subsection (b)

describes the required format of RWPs and lists the sections of this proposed chapter which must be reported in a RWP as a separate chapter. This format clarification makes the RWPs more accessible for the public as each regional water plan will have the enumerated topics presented separately.

Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations.

Proposed new <\*>357.30 relating to description of the regional water planning area lists the basic descriptions required in the RWP in proposed new subsection (a). Proposed subsection (a)(9) requires that each planning group identify the historic drought of record within the planning area, a task not previously required . This requirement provides more region specific information as there may be some significant differences from one part of the state to another relating to past droughts of record.

Proposed new <\*> 357.31. relating to projected population and water demands contains subsection (a) requiring that population and water demands be reported by water user groups (WUG) which are defined in proposed new <\*>357.10. Proposed new subsection (b) requires that the RWP present projected water demands by wholesale water providers (WWP) and by category of water use including municipal, irrigation and manufacturing among others. Proposed subsection (c) requires reporting of current contractual obligations of both WUGs and WWPs and any other projected demands for water; the goal is determining the net existing water supplies available for each WUG. Proposed subsection (d) relates to municipal water demands and requires that the demand calculation be adjusted to reflect water savings gained through plumbing fixture requirements identified in the Tex. Health and Safety Code. Proposed

subsection (e) describes the method for developing population projections and water demand projections; these projections are calculated by the board and disseminated to the RWPGs. Subsection (e)(2) provides a mechanism for revising other population and water demand data through a request to the board. Proposed subsection (f) requires reporting of the population and demand projections for each planning decade.

Proposed new <\*>357.32 relating to water supply analysis requires RWPGs to evaluate source water availability during drought of record conditions and the physically and legally available existing water supplies in proposed subsection (a). Proposed subsection (b) details the considerations used to conduct evaluations of surface and groundwater data. Proposed subsection (c) requires the use of firm yield analysis of surface water, which may be modified with the approval of the executive administrator, while proposed subsection (d) requires use of modeled available groundwater volumes for analysis of groundwater availability. The groundwater availability analysis must be consistent with the desired future conditions as they were determined on the date of the adoption of the state water plan or as established by the RWPG subsequent to the adoption of the state water plan. The RWPGs have the discretion to determine the applicable date.

Proposed subsection (e) requires an evaluation of the existing water supplies for each WUG and for each WWP. Proposed subsection (f) describes how the RWPGs report water supply through analyzing existing contracts and subsection (g) describes the format for reporting water supply by WUG and by WWP.

Proposed <\*> 357.33 relating to needs analysis: comparison of water supplies and demands requires the RWPGs to include comparisons of existing supplies and projected demands for water to determine current and future needs for water in the RWPA in proposed subsection (a). Proposed subsection (b) states that RWPGs will determine future needs through the analysis of supplies and the projections of demand for each of the user groups listed in proposed <\*> 357.10(a)(31). Proposed subsection (c) requires evaluation of the social and economic impacts of not meeting water needs in the future. Proposed subsection (d) describes how the results of the needs analysis will be reported. Proposed subsection (e) is a new requirement under which RWPGs shall perform a secondary water needs analysis for all user groups and wholesale water providers when conservation and direct reuse are recommended water management strategies.

Proposed <\*> 357.34 relating to identification and evaluation of potentially feasible water management strategies requires strategies to meet the supply needs for each water user group in proposed subsection (a). Proposed new subsection (b) requests identification of potentially feasible water management strategies for each WUG and WWP that must meet new supply obligations including a plan for supply in a drought of record. Proposed subsection (c) provides examples of potentially feasible water management strategies as guidance for the RWPGs. A new provision in proposed subsection (c) notes the use of demand management through conservation and drought management measures. Proposed subsection (d) describes the method for analyzing potentially feasible strategies and describes which matters require quantitative reporting. Proposed new subsection (e) requires the RWPGs to evaluate water management strategies with enough specificity to allow state agencies to make financial or regulatory decisions to determine whether a particular policy, permit or project is consistent with the state



water plan. Proposed subsection (f) describes the new requirements for conservation, drought management measures and drought contingency plans and requires the consideration of the development of drought management measures for each identified future water supply need in proposed subsection (f)(1). Proposed subsection (f)(2) describes how the RWPG considers water conservation practices and also discusses interbasin transfers as prescribed in the Tex. Water Code, <\*>11.085. All recommendations relating to water conservation, including model water conservation plans, will be reported in a separate subchapter of a RWP pursuant to proposed subsection (g).

Proposed new <\*>357.35(a) relating to recommended and alternative water management strategies requires the identification of the strategies that are recommended after review and analysis of those that are potentially feasible. Proposed subsection (b) requires that the recommended strategies be cost effective and environmentally sensitive and references proposed <\*>357.34 for further information about cost effectiveness and environmental sensitivity review. Proposed subsection (c) emphasizes that the cost effective water management strategies shall be consistent with long term protection of agricultural, water and natural resources. Proposed subsection (d) provides two exceptions from the requirement to identify and recommend water management strategies for drought of record; those are when no strategy is feasible and where a political subdivision has needs within its boundary, but does not participate in the planning process. Proposed subsection (e) allows political subdivisions to object to the inclusion of a particular strategy and the objection may result in removal of that strategy as a method of identifying a need in the political subdivision. However, the strategy can be used to address other needs. Proposed subsection (f) contains other constraints on the substance of

recommended strategies; those are protection of existing water rights and other contracts relating to water rights. Proposed subsection (g) contains a summary of the reporting requirements for water management strategies in subsection (g)(1) and also describes the method of calculated planning safety factors which are newly designed to show the extent that recommended water management strategies meet or exceed the identified needs for each WUG and WWP when all strategies are implemented pursuant to subsection (g)(2). Proposed subsection (g)(3) requires fully evaluated alternative strategies to be located in one place within the RWP.

#### Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation.

Proposed **<\*>357.40** relating to Impacts of Regional Water Plan describes the types of impacts that shall be analyzed and the necessarily included considerations. Proposed subsection (a) requires a quantitative description of the socioeconomic impacts of not meeting future water needs; proposed subsection (b) lists specific types of impacts for description including the effects on agricultural resources and threats to agricultural and natural resources in subsections (b)(1) and (b)(3), other water resources in subsection (b)(2), third party socioeconomic impacts resulting from voluntary redistributions of water in subsection (b)(4), impacts on key water quality parameters in proposed subsection (b)(5), and impacts on navigation in proposed subsection (b)(6). Proposed subsection (c) requires a summary of unmet identified water needs. Proposed new **<\*>357.41** relating to consistency with long-term protection of water resources, agricultural resources and natural resources requires a discussion of how the entire RWP meets the goals of the protections of these resources as they are described in the guidance principles of chapter 358.

Proposed new <\*> 357.42 relating to drought response information, activities, and recommendations is a new section that provides specificity in drought management considerations and addresses the inclusion of drought management strategies. Proposed subsection (a) requires the consolidation of current information on preparations for and responses to drought within the RWPA. Proposed subsection (b) requires a description of methods for water suppliers to respond to drought. Proposed subsection (c) requires the development of drought response recommendations for existing surface and groundwater supplies, including recommended drought triggers, response actions and use of existing drought contingency plans in proposed subsections (c)(1), (2) and (3).

Proposed subsection (d), based on the language of Tex. Water Code <\*>16.053(r), provides a mechanism for protecting sensitive information regarding interconnections in the event of emergency water shortages; this information is confidential by statute and this proposed subsection directs the RWPGs to discuss this information only in closed sessions and to provide the information to the EA. Any discussion of a drought contingency plan that relies on emergency interconnections shall also be kept confidential pursuant to proposed subsection (e).

Proposed subsection (f) explains the way RWPGs shall present their recommended and alternative drought management water management strategies. Proposed subsection (g) requires an evaluation of potential emergency responses to drought or to loss of existing supplies for municipal WUGs, for WUGs that rely on a sole source of supply, and all county-other WUGs.

Proposed subsection (h) requires consideration of recommendations from the Texas Drought Preparedness Council and proposed subsection (i) requires a list of the preparation and response recommendations of the RWPGs. Proposed subsection (j) requires the development of regional model drought contingency plans.

Proposed <\*> 357.43. relating to regulatory, administrative or legislative recommendations requires a description of these recommendations in the regional water plan in proposed subsection (a). Proposed subsection (b) contains the criteria for ecologically unique river and stream segments in proposed subsection (b)(1) by reference to the criteria defined in <\*>358.2 of this title, while proposed subsection (b)(2) requires the RWPGs to periodically assess the impact of the RWP on the designated segments. Proposed subsection (c) describes the criteria for designation of a unique site for reservoir construction by reference to the criteria defined in <\*>358.2 of this title. Proposed subsection (d) allows the RWPGs to provide other recommendations that would facilitate water planning and conservation of water resources. Proposed subsection (e) notes that the RWPGs may continually develop information regarding impacts of any changes to the laws relating to RWPs and proposed subsection (f) requests the RWPGs to consider recommending legislation to facilitate voluntary water transfers.

Proposed <\*>357.44 relating to infrastructure financing analysis requires RWPGs to assess and report on how entities in the planning area propose to finance recommended water management strategies. This new section is based on Tex. Water Code <\*>16.053(q).

Proposed new <\*>357.45 relating to implementation and comparison to previous regional water plan requires that the RWP provide a description of implementation of previously recommended water management strategies in proposed subsection (a). This subsection corresponds to changes in Tex. Water Code <\*> 16.051(a-1), the result of Sunset review of the board; it requires an analysis of how the state is meeting water needs through the implementation of projects.

Proposed subsection (b) describes the factors to be used in describing changes from previous RWPs.

#### Subchapter E. Adoption, Submittal, and Amendments to Regional Water Plans

Proposed new <\*>357.50 relating to adoption, submittal and approval of regional water plans prescribes the procedures for submitting adopted RWPs to the board including the schedule in subsection (a). Proposed subsection (b) also requires submission of an initially prepared plan to the board at the same time the initially prepared plan is made available for public comment.

Proposed subsection (c) reminds the RWPGs about the public notice requirements of proposed <\*>357.21 relating to initially prepared plans; proposed subsection (d) contains some of the content of proposed <\*>357.21 in detailing the time for receipt of comments on the adoption of a RWP. Proposed subsection (e) relating to submittal of initially prepared plans, adopted RWPs and amendments to RWPs describes the procedures for doing each of the preceding including contents, schedules for submissions, means of transfers of data. Proposed subsection (f) requires the submission of information relating to an interregional conflict; subsection (g) requires modification of the RWPs to conform to board resolution of such conflicts; subsection (h) encourages RWPs to resolve such conflicts and subsection (i) states that the RWP must comply with statute and rules to gain board approval, the criteria for which are detailed in proposed subsection (j) based on Tex. Water Code <\*>16.053(h)(7). Proposed subsection (k) provides notice that an approved RWP shall be incorporated into the state water plan.

Proposed <\*> 357.51 relating to amendments to regional water plans contains information relating to requests for amendment in proposed subsection (a) which allows requests to amend by political subdivisions and describes the required procedures, including contents of a required

petition and the role of the EA and the board. Proposed subsection (b) describes the procedures for amendments to the RWPs and the state water plan. Proposed subsection (c) relating to minor amendment to RWPs and the state water plan are essentially unchanged from current <\*>357.16 relating to minor amendments and clean coal project amendments. Proposed subsection (d) describes the requirements for amendments relating to a clean coal project which provides an expedited process to facilitate such projects. Proposed subsection (e) describes the procedure required for substitution of alternative water management strategies and proposed subsection (f) explains that the board amends the state water plan after the regional water plans are amended.

#### Subchapter F. Consistency and Conflicts in Regional Water Plans

Proposed <\*>357.60(a) relating to consistency of regional water plans states that the plans must be consistent with the guidance principles in chapter 358 of this title. Proposed subsection (b) discusses the requirement in Tex. Water Code <\*>16.053(j) that board funded projects must be consistent with the regional water plans; the subsection states that the project must meet a need identified in the RWP and where the project is an enhancement of a current water supply, involves a minor modification to an existing surface water right, or meets the need in a manner consistent with recommended strategies, then the project is considered consistent with the RWP. Additionally proposed subsection (b) requires board funded projects to be consistent with the identified need in a RWP. Subsection (b)(1) describes that a project is consistent, even if not a recommended strategy, where the project enhances a current supply. Proposed subsection (b)(2) deems that a project that makes a minor modification to an existing surface water right is not in conflict with the RWP. Proposed subsection (b)(3) provides that any project that meets a need in a manner consistent with the RWP will be considered consistent for funding purposes. Proposed

subsection (b)(4) states that where there is no recommended water management strategy for a need, than a project proposed to meet the need will not be consistent and therefore not eligible for board funding. The proposed subsection also discusses the board's authority to waive the consistency requirement based on changed conditions in proposed subsection (b)(5). Finally, subsection (c) requires that RWPs be consistent with board rules, and to consider the state and local water plans.

Proposed <\*>357.61 relating to intraregional conflicts in development of regional water plans provides that the board will provide assistance in resolving such conflicts pursuant to subsection (a).

Proposed <\*>357.62 relating to interregional conflicts describes the process for resolution of an interregional conflict in proposed subsection (a). Proposed subsection (b) describes the procedures when negotiations to resolve the conflict are not successful. Ultimately, pursuant to proposed subsections (c) and (d) the TWBD makes the decision resolving the conflict and the affected RWPGs make the changes required by the board.

Proposed <\*>357.63 relating to failure of a RWP to meet planning requirements describes the statutory authority of the board to direct changes in RWPs to ensure compliance with statutes and this chapter and proposed subsection (b) allows the RWPGs a reasonable time to complete any required changes.

Proposed <\*> 357.64 relating to conflicts between regional water plans and groundwater management plans describes the process for a groundwater conservation district to petition the

board about a perceived conflict between the district's approved management plan and the approved state water plan pursuant to subsection (a) which also describes the required contents of the petition. Proposed subsection (b) describes the role of the board in resolving the conflict, including coordinating formal mediation session. In proposed subsection (c), the board resolves the conflict where the parties cannot agree during mediation; the board may revise the RWP and the district management plan to achieve consistency. Proposed subsections (d) and (e) describe the public hearing and required revisions to either plan and proposed subsection (f) notes the board may, but is not required to discuss the conflict in the state water plan.

In summary, the entirely new requirements in proposed new chapter 357 are: (1) added definitions in proposed <\*>357.10; (2) streamlining of the board's administrative responsibilities relating to the formation of regional water planning groups and addition of a groundwater management area voting interest category in proposed <\*>357.11; (3) the removal of requirements relating to special water resources as the regional water planning groups did not utilize that category; (4) the consolidation of notice requirements and other Open Meeting Act issues in proposed <\*>357.21; (5) the renewed emphasis on planning for drought management, response and recommended drought management strategies are consolidated into proposed subchapter D; (6) the integration of the consideration of environmental flow standards in proposed <\*>357.34 (d)(3)(B); (7) the consolidation of all relevant guidance principles, now located in proposed new chapter 358 of this title; (8) the calculation of a secondary needs analysis in proposed <\*>357.33(e); and (9) the calculation of a planning safety factor in <\*>357.35(h)(2). Finally, in response to the board's Sunset legislation, SB 660 the following changes have been made: proposed <\*>357.10(a)(7) dealing with consistency between regional



water plans and desired future conditions; and proposed <\*>357.45 relating to a description of implemented previous water management strategies.

Tex. Water Code <\*> 16.051(c), (d), and 16.053 (f), (h-1)(11), and (r) are affected by these rules.

These proposed rules have been reviewed by legal counsel and have been determined to be within the board's legal authority.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any additional estimated costs to state and local governments as a result of enforcing or administering the rule for the first five years these rules will be in effect. These rules contain procedural and substantive directives to the regional water planning groups who are required to comply with the directives. There are no estimated additional costs because the funding for regional water planning is from the board's research and planning funds. Additionally, there are no changes to these rules that affect the costs to the representative political subdivisions that administer the funds for the regional water planning groups.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect because the funding for planning comes from the board's research and planning fund and because the rules do not significantly increase the administration of the planning process.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering these rules for the first five years that these rules will be in effect. These proposed rules do not affect the revenues of state or local governments.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that these rules do not impose costs to the public as the rules are not directed to members of the public. The rules do not impose any additional costs on the political subdivisions that administer grant funds on behalf of the regional water planning groups because the rules do not contain any additional administrative requirements. Additionally, these rules provide a public benefit through improved clarity and elimination of unnecessary rules that will assist the public in understanding the funding of regional water planning activities throughout the state. These public benefits will be effective for the first five years the rules are in effect.

Ms. Brittin has also determined that there are no probable economic costs to persons required to comply with these rules. The regional water planning groups already use the board's rules in

developing the regional water plans. The costs are funded by state planning grants and these proposed rules do not significantly increase the costs of regional planning.

Ms. Brittin has determined that these rules do not constitute a major environmental rule because they are not based on a standard set by federal law, do not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and are adopted pursuant to express state laws under Tex. Water Code, chapter 15.

Ms. Brittin has determined that these rules do not impact private property because the rule is directed to regional water planning groups and the political subdivision that acts as the administrator of grant funds from the board and is not directed to private landowners. The rules do not affect private property because it does not authorize any governmental entity to regulate or affect the status of private property. The rules regulate only the distribution of funds from the board's research and planning fund.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 475-2053.

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PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 357. Regional Water Planning

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## **Subchapter A – General Information**

### **§357.10. Definitions and Acronyms**

The following words, used in this chapter, have the following meanings.

- (1) **Alternative water management strategy** – A fully evaluated water management strategy that may be substituted into a regional water plan in the event that a recommended water management strategy is no longer recommended.
- (2) **Availability** – Maximum amount of water available from a source during the drought of record, regardless of whether the supply is physically or legally available to water user groups.
- (3) **Board** – The Texas Water Development Board
- (4) **Collective Reporting Unit** - A Collective Reporting Unit is a grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common wholesale water providers, having common sources, or other appropriate associations.
- (5) **Commission** – The Texas Commission on Environmental Quality
- (6) **Conflict between a regional water plan and a groundwater management plan** – A regional water plan is in conflict with a groundwater management plan if the groundwater availability amount in the regional water plan exceeds the modeled available groundwater amount included in the groundwater management plan for the relevant aquifers in the regional water planning area. The modeled available groundwater amount must be associated with a desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.
- (7) **Consistency between a regional water plan and a desired future condition** - A regional water plan is consistent with a desired future condition if the groundwater availability amount in the regional water plan does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers located in the regional water planning area. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.
- (8) **County-other** – An aggregation of residential, commercial, and institutional water users in cities with less than 500 people or utilities that provide less than an average of 250,000 gallons per day, as well as unincorporated rural areas in a given county.
- (9) **Drought contingency plan** – A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code, § 11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders.) The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

- (10) Drought management measures – Demand management activities to be implemented during drought that may be evaluated and included as water management strategies.
- (11) Drought of record – The period of time when natural hydrological conditions provided the least amount of water supply.
- (12) Executive administrator (EA) – The executive administrator of the Board or a designated representative.
- (13) Existing water supply – Maximum amount of water available from existing sources for use during drought of record conditions that is physically and legally available for use by a water user group.
- (14) Firm Yield – Maximum water volume a reservoir can provide each year under a repeat of the drought of record using reasonable sedimentation rates and assuming that all senior water rights will be totally utilized.
- (15) Interbasin transfer of surface water – Defined and governed in Texas Water Code, §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.
- (16) Interregional Conflict – An interregional conflict exists when more than one regional water plan relies upon the same water source, so that there is not sufficient water available to fully implement both plans and would create an over-allocation of that source.
- (17) Intraregional conflict – A conflict between two identified, quantified, and recommended water management strategies in the same adopted regional water plan that rely upon the same water source, so that there is not sufficient water available to fully implement both water management strategies and thereby creating an over-allocation of that source.
- (18) Initially Prepared Plan (IPP) – Draft regional water plans that are presented at a public hearing in accordance with §357.21(d) and submitted for Board review and comment.
- (19) Political subdivision – City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating Texas Water Code, § 67 (relating to Nonprofit Water Supply or Sewer Service Corporations.)
- (20) Regional water plan (RWP) – The plan adopted or amended by a regional water planning group pursuant to Texas Water Code, §16.053 (relating to Regional Water Plans) and this chapter.
- (21) Regional water planning area (RWPA) – Area designated pursuant to Texas Water Code, §16.053.
- (22) Regional water planning group (RWPG) – Group designated pursuant to Texas Water Code, §16.053.
- (23) Retail public utility – Defined in Texas Water Code, § 13.002 (relating to Water Rates and Services) as “any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.”
- (24) Safe Yield - The annual amount of firm water that can be withdrawn from a reservoir such that a reserve exists for conditions more severe than the drought of record.

- (25) State Drought Preparedness Plan – A plan, separate from the State Water Plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code, §16.0551 (relating to State Drought Preparedness Plan.)
- (26) State Drought Response Plan – A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code, §16.055 (relating to Drought Response Plan.)
- (27) State Water Plan – The most recent state water plan adopted by the Board under the Texas Water Code, §16.051 (relating to State Water Plan.)
- (28) Water conservation measures – practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as water management strategies.
- (29) Water Conservation Plan – A plan required by Texas Water Code, § 11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate more than 1,000 acre-feet per year or more for municipal, industrial, and other uses and for those who irrigate more than 10,000 acre-feet per year. These plans must include specific, quantified 5-year and 10-year targets for water savings.
- (30) Water Management Strategy – A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply.
- (31) Water User Group (WUG) – Identified user or group of users for which water demands and water supplies have been identified and analyzed and plans developed to meet water needs. These include:
- (A) Incorporated Census places of a population greater than 500, including select Census Designated Places, such as significant military bases or cases in which the Census Designated Place is the only Census place in the county;
  - (B) Retail public utilities providing more than 280 acre-feet per year for municipal use;
  - (C) Collective Reporting Units, or groups of retail public utilities that have a common association;
  - (D) Municipal and domestic water use, referred to as county-other, not included in (A) – (C); and
  - (E) Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a county in a RWPA.
- (32) Wholesale Water Provider (WWP) – Any person or entity, including river authorities and irrigation districts, that has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan. The regional water planning groups shall include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan.

### **§357.11. Designations**

- (a) The Board shall review and update the designations of RWPA's as necessary but at least every five years, on its own initiative or upon recommendation of the executive administrator. The Board shall provide 30 days notice of its intent to amend the designations of RWPA's by publication of the proposed change in the Texas Register and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA's proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPA's proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of a RWPA
- (b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which regional water plans shall be developed, taking into consideration factors such as:
  - (1) River basin and aquifer delineations;
  - (2) Water utility development patterns;
  - (3) Socioeconomic characteristics;
  - (4) Existing regional water planning areas;
  - (5) Political subdivision boundaries;
  - (6) Public comment; and
  - (7) Other factors the Board deems relevant.
- (c) After an initial coordinating body for a regional water planning group is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the executive administrator shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the executive administrator. The bylaws adopted by the RWPG shall at a minimum address the following elements:
  - (1) definition of a quorum necessary to conduct business;
  - (2) method to be used to approve items of business including adoption of regional water plans or amendments thereto;
  - (3) methods to be used to name additional members;
  - (4) terms and conditions of membership;
  - (5) methods to record minutes and where minutes will be archived as part of the public

record; and

(6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

- (d) RWPGs shall maintain at least one of the following representatives as voting members of the RWPG. If a RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.
- (1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2-12) of this subsection other than as a normal consumer;
  - (2) Counties, defined as the county governments for the 254 counties in Texas;
  - (3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;
  - (4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;
  - (5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;
  - (6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;
  - (7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 100 employees or less than \$1 million in gross annual receipts;
  - (8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;
  - (9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;
  - (10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, § 52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;
  - (11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and
  - (12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within a RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.



- (e) The RWPGs shall add the following non-voting members , who shall receive meeting notifications and information in the same manner as voting members:
- (1) Staff member of the Board to be designated by the EA;
  - (2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;
  - (3) Member designated by each adjacent RWPG to serve as a liaison;
  - (4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA; and
  - (5) Staff member of the Texas Department of Agriculture designated by its commissioner.
- (f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.
- (g) Each RWPG, at its discretion, may at any time add additional voting and or non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) that the RWPG considers appropriate for water planning..
- (h) Each RWPG, at its discretion may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d).
- (i) RWPGs may enter into formal and or informal agreements to coordinate, avoid conflicts, and or share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in a RWP only upon approval of the RWPG.
- (j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding drought management measures and water conservation practices.

#### **§357.12. General Regional Water Planning Group Responsibilities and Procedures**

- (a) Prior to the preparation of the RWPs. In accordance with the public participation requirements in §357.21, the RWPGs shall:
- (1) hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan;

- (2) prepare a scope of work that includes a detailed description of tasks to be performed, identifies responsible parties for task execution, a task schedule, task and expense budgets, and describes interim products, draft reports, and final reports for the planning process;
  - (3) approve any amendments to the scope of work only in an open meeting of the RWPG where notice of the proposed action was provided in accordance with §357.21; and
  - (4) designate a political subdivision or political subdivisions as a representative) of the RWPG eligible to apply for financial assistance for scope of work and RWP development pursuant to Chapter 355, Subchapter C, of this title (relating to Regional Water Planning Grants.)
- (b) A RWPG shall hold a public meeting to determine the process for identifying potentially feasible water management strategies; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible water management strategies that are potentially feasible for meeting a need in the region. The public meeting under this subsection shall be in accordance with their requirements of §357.21(b) of this title.
- (c) If applicable, and approved by the EA, implement simplified planning in accordance with guidance to be provided by the EA. If a RWPG determines in its analysis of water needs that it has sufficient supplies in the RWPA to meet water needs for the 50-year planning period, RWPGs may conduct simplified regional water planning as follows:
- (1) identify water supplies that are available for voluntary redistribution in a RWPA or to other RWPAs;
  - (2) where appropriate, adopt previous RWP and or state water plan information, updated as necessary, as the RWP; and or
  - (3) other activities upon approval of the EA necessary to complete a RWP that meets rule and statute requirements.

## **Subchapter B – Guidance Principles and Notice Requirements**

### **§357.20. Guidance Principles for State and Regional Water Planning**

Development of the state water plan and of RWPs shall be guided by the principles stated in §358.3 of this title (relating to Guidance Principles.)

### **§357.21. Notice and Public Participation**

- (a) RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Government Code § 551, with a copy of all materials presented or discussed available for public inspection prior to and following the

meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections.

- (b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:
  - (1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; process of identifying potentially feasible water management strategies; Executive Committee meetings; subcommittee or subgroup meetings; meetings to replace RWPG members or addition of new RWPG members; and adoption of regional water plans.
  - (2) Published 72 hours prior to the meeting,
  - (3) Notice shall include:
    - (A) a date, time, and location of the meeting,
    - (B) a summary of the proposed action to be taken, and
    - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.
  - (4) Entities to be notified include:
    - (A) All voting and non-voting RWPG members,
    - (B) Any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity, and
    - (C) each County Clerk, in writing, within the RWPA.
  - (5) Notice and agenda to be posted:
    - (A) On the website of the host political subdivision and or on the Board website if requested by the RWPG, and
    - (B) Texas Secretary of State website
  - (6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:
    - (A) Agenda of meeting, and
    - (B) Copies of all materials presented or discussed at the meeting.
- (c) Notice under this subsection shall meet the following requirements:
  - (1) These notice requirements apply to the following RWPG actions: population projection and or water demand projection revision requests to officially adopted Board

projections; substitution of alternative water management strategies; and, minor amendments to RWPs.

- (2) Notice of meetings under this subsection shall be published/postmarked on the internet, emailed, and mailed to the public before the 14<sup>th</sup> day preceding the date of the meeting.
- (3) Notice shall include:
  - (A) a date, time, and location of the meeting;
  - (B) a summary of the proposed action to be taken;
  - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and
  - (D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.
- (4) Entities to be notified include:
  - (A) All voting and non-voting RWPG members;
  - (B) Any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity;
  - (C) each County Clerk, in writing, within the RWPA; and
  - (D) each County Clerk in counties outside the RWPA where a recommended or alternative water management strategy being considered would be located.
- (5) Notice and associated meeting agenda to be posted:
  - (A) On the website of the host political subdivision and or on the Board website if requested by the RWPG; and
  - (B) Texas Secretary of State website.
- (6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:
  - (A) Agenda of meeting; and
  - (B) Copies of all materials, reports, plans presented or discussed at the meeting.
- (7) Public comments to be accepted as follows:
  - (A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

- (B) Oral and written public comment during meeting; and
  - (C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.
- (d) Notice under this subsection shall meet the following requirements:
- (1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; holding hearings for IPPs; and, requesting research and planning funds from the Board.
  - (2) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA as follows:
    - (A) before the 30th day preceding the date of the public meeting or hearing; and,
    - (B) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.
  - (3) notice of the public meetings and public hearings shall include:
    - (A) a date, time, and location of the public meeting or hearing;
    - (B) a summary of the proposed action to be taken;
    - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and
    - (D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in (8)(A) of this subsection.
  - (4) If applying for Board funding, the notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the regional water planning area; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.
  - (5) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each

county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on an electronic disc or drive, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on web sites and providing notice of such posting.

- (6) Notice shall be mailed to, at a minimum, the following:
- (A) Notification of all entities that are to be notified under (c)(4) of this section;
  - (B) each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;
  - (C) each county judge of a county located in whole or in part in the RWPA;
  - (D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;
  - (E) Additionally, for public hearings or meetings to obtain input on development of a future RWP or a meeting or hearing associated with IPPs or major RWP amendments:
    - (i) each retail public utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and
    - (ii) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission; and
  - (F) Additionally, a RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs.
- (7) Notice and associated hearing and meeting agenda shall also be posted:
- (A) On the website of the host political subdivision and or on the Board website if requested by the RWPG;
  - (B) Texas Secretary of State website; and
  - (C) In the Texas Register.
- (8) Public comments to be accepted as follows:

- (A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and,
  - (i) Until not earlier than 30-days following the date of the public hearing on a major amendment to a RWP.
  - (ii) Until not earlier than 60 days following the date of the public hearing on an IPP.
- (B) Verbal public comments at the noticed meeting or hearing;
- (C) Comments received must be considered as follows:
  - (i) Comments associated with hearings must be considered by RWPG members when adopting a RWP or adopting a major amendment to a RWP.
  - (ii) Comments associated with a preplanning meeting, scope of work development, and/or an application for funding to the Board must be considered prior to taking RWPG action.

**§357.22. General Considerations for Development of Regional Water Plans**

- (a) RWPGs shall consider existing local, regional, and state water planning efforts, including water plans, information and relevant local, regional, state and federal programs and goals when developing the regional water plan. The RWPGs shall also consider :
  - (1) water conservation plans;
  - (2) drought management and drought contingency plans;
  - (3) information compiled by the Board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits);
  - (4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;
  - (5) local and regional water management plans;
  - (6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code, §35.019 (relating to Priority Groundwater Management Areas);
  - (7) the Texas Clean Rivers Program;
  - (8) the U.S. Clean Water Act;
  - (9) water management plans;
  - (10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;

- (11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code, §16.054 (relating to Local Water Planning);
  - (12) approved groundwater regulatory plans; and,
  - (13) any other information available from existing local or regional water planning studies.
- (b) The required content of sections §357.30; §357.31; §357.32; §357.33; §357.34-.35; §357.40-.41; §357.42; §357.43; §357.44; §357.45; and §357.50 shall be reported separately as chapters in the RWP.

### **Subchapter C – Planning Activities for Needs Analysis and Strategy Recommendation**

#### **§357.30. Description of the Regional Water Planning Area**

- (a) RWPGs shall describe their regional water planning area including the following
  - (1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;
  - (2) current water use and major water demand centers;
  - (3) current groundwater, surface water, and reuse supplies including major springs that are important for water supply or protection of natural resources;
  - (4) wholesale water providers;
  - (5) agricultural and natural resources;
  - (6) identified water quality problems;
  - (7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;
  - (8) summary of existing local and regional water plans;
  - (9) the identified historic drought(s) of record within the planning area;
  - (10) current preparations for drought within the RWPA;
  - (11) information compiled by the Board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits); and,
  - (12) An identification of each threat to agricultural and natural resources and a discussion of how that threat will be addressed or affected by the water management strategies evaluated in the plan.



**§357.31. Projected Population and Water Demands**

- (a) RWPs shall present projected population and water demands by WUG as defined in §357.10. If a WUG lies in one or more counties and or RWPA and or river basins, data shall be reported for each river basin, RWPA, and county split.
- (b) RWPs shall present projected water demands associated with WWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for each county or portion of a county in the RWPA. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin.
- (c) RWPs shall report the current contractual obligations of WUG and WWPs to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 in order to determine net existing water supplies available for each WUG's own use.
- (d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, §372. RWPGs will determine and report how changes in plumbing fixtures would affect projected municipal water demands using projections with plumbing code savings provided by the Board or by methods approved by the EA.
- (e) Source of population and water demands. In developing RWPs, RWPGs shall use:
  - (1) Population and water demand projections developed by the EA that will be contained in the next state water plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.
  - (2) RWPGs may request revisions of Board adopted population and or water demand projections if the request demonstrates that population and or water demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and water demand projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(c). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from a RWPG for revision of population or water demand projections,
- (f) Population and water demand projections shall be presented for each planning decade for each of the above reporting categories.

### **§357.32. Water Supply Analysis**

(a) RWPGs shall evaluate:

- (1) source water availability during drought of record conditions; and,
- (2) existing water supplies that are legally and physically available to WUGs and wholesale water suppliers within the RWPA for use during the drought of record.

(b) Evaluations shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during drought of record conditions.

(c) Evaluation of the existing surface water available during drought of record shall be based on firm yield. The analysis may be based on justified operational procedures other than firm yield. The EA shall consider a written request from a RWPG to use procedures other than firm yield. For surface water supply analysis, RWPGs will use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. RWPGs will assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use other water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available.

(d) RWPGs shall use modeled available groundwater volumes for groundwater availability, as issued by the Board, and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater availability used in the RWP must be consistent with the desired future conditions as of the date the Board most recently adopted a state water plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent state water plan.

(e) RWPGs shall evaluate the existing water supplies for each WUG and WWP.

(f) Water supplies based on contracted agreements will be based on the terms of the contract, which may be assumed to renew upon contract termination if the contract contemplates renewal or extensions.

(g) Evaluation results shall be reported by WUG in accordance with §357.31(a) and WWPs in accordance with §357.31(b).

### **§357.33. Needs Analysis: Comparison of Water Supplies and Demands**

(a) RWPGs shall include comparisons of existing water supplies and projected water demands to identify water needs.

(b) RWPGs shall compare projected water demands, developed in accordance with §357.31, with existing water supplies available to WUGs and WWPs in a planning area, as developed in accordance with §357.32, to determine whether WUGs will experience water surpluses or needs for additional supplies. Results will be reported for WUGs and

for WWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in a RWPA.

- (c) The social and economic impacts of not meeting water needs will be evaluated by RWPGs and reported for each RWPA.
- (d) Results of evaluations will be reported by WUG in accordance with §357.31(a) and WWPs in accordance with §357.31(b).
- (e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation water management strategies and or direct reuse water management strategies are recommended. This secondary water needs analysis will calculate the water needs that would remain after assuming all recommended conservation and direct reuse water management strategies are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and WWP and decade.

#### **§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies**

- (a) RWPGs shall identify and evaluate potentially feasible water management strategies for all WUGs and WWPs with identified water needs.
- (b) RWPGs shall identify potentially feasible water management strategies to meet water supply needs identified in §357.33 in accordance with the process in §357.12(b). Strategies shall be developed for WUGs and WWPs. The strategies shall meet new water supply obligations necessary to implement recommended water management strategies of WWPs and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWPs, RWPGs shall provide WMSs to be used during a drought of record.
- (c) Potentially feasible water management strategies may include, but are not limited to:
  - (1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.
  - (2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.
  - (3) Conservation and drought management measures including demand management.

- (4) Reuse of wastewater.
  - (5) Interbasin transfers of surface water.
  - (6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code, §11.139 (relating to Emergency Authorizations.)
- (d) Evaluations of potentially feasible water management strategies shall include the following analyses:
- (1) For the purpose of evaluating potentially feasible water management strategies, the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who will consider a written request from a RWPG to use assumptions other than no return flows and full utilization of senior water rights.
  - (2) An equitable comparison between and consistent evaluation and application of all water management strategies the RWPGs determine to be potentially feasible for each water supply need.
  - (3) A quantitative reporting of:
    - (A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during drought of record conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.
    - (B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations will be in accordance with the Commission's adopted environmental flow standards under 30 Texas Administrative Code, §298 (relating to Environmental Flow Standards for Surface Water) or, if unavailable, information from environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the state water plan after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that water management strategies are adjusted to provide for appropriate environmental water needs including instream flows and bays and estuaries inflows.
    - (C) Impacts to agricultural resources.

- (4) Discussion of the plan's impact on other water resources of the state including other water management strategies and groundwater and surface water interrelationships.
  - (5) , A discussion of each threat to agricultural or natural resources identified pursuant to 357.30(a)(7) including how that threat will be addressed or affected by the water management strategies evaluated.
  - (6) If applicable, consideration and discussion of the provisions in Texas Water Code, §11.085(k)(1) for interbasin transfers of surface water. At minimum, this consideration will include a summation of water needs in the basin of origin and in the receiving basin.
  - (7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.
  - (8) A description of the major impacts of recommended water management strategies on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended water management strategies to current conditions using best available data.
  - (9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in subsection §357.22(a)(3).
  - (10) Other factors as deemed relevant by the RWPG including recreational impacts.
- (e) RWPGs shall evaluate and present potentially feasible water management strategies with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.
  - (f) Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending water management strategies. RWPGs shall incorporate water conservation planning and drought contingency planning in the regional water planning area.
- (1) Drought management measures including water demand management. RWPGs shall consider drought management measures for each need identified in §357.33 of this chapter and shall include such measures for each user group to which Texas Water Code, §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the drought management measures on water needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code, §11.1272. If a RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.
  - (2) Water conservation practices. RWPGs must consider water conservation practices for each identified water need.

- (A) RWPGs shall include water conservation practices for each user group to which Texas Water Code, §11.1271 (relating to Water Conservation Plans) applies. The impact of these water conservation practices on water needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code, §11.1271.
  - (B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of (2)(A) of this subsection, whether or not the WUG is subject to Texas Water Code, §11.1271. If RWPGs do not adopt a water conservation strategy to meet an identified need, they shall document the reason in the RWP.
  - (C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code, §11.085 (relating to Interbasin Transfers) applies, RWPGs will include a water conservation strategy, pursuant to §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs will determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs will develop conservation strategies based on this determination. In preparing this evaluation, RWPGs will seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs will develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code, §11.085. Strategy evaluation in accordance with this section will include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.
  - (D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by retail public utilities pursuant to §358.6 of this title.
- (g) RWPs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPs model water conservation plans pursuant to Texas Water Code, § 11.1271.

**§357.35. Recommended Water Management Strategies and Alternative Water Management Strategies**

- (a) RWPGs shall recommend water management strategies to be used during a drought of record based on the potentially feasible water management strategies evaluated under §357.34.

- (b) RWPGs shall recommend specific water management strategies based upon the identification, analysis, and comparison of water management strategies by the RWPG that the RWPG determines are potentially feasible so that the cost effective water management strategies that are environmentally sensitive are considered and adopted unless a RWPG demonstrates that adoption of such strategies is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs will follow processes described in §357.34. The RWP may include alternative water management strategies evaluated by the processes described in §357.34.
- (c) Strategies will be selected by the RWPGs so that cost effective water management strategies, which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.
- (d) RWPGs shall identify and recommend water management strategies for all WUGs and WWPs with identified water needs and that meet all water needs during the drought of record except in cases where:
  - (1) no water management strategy is feasible. In such cases, RWPGs must explain why no management strategies are feasible; or
  - (2) a political subdivision that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.
- (e) Specific recommendations of water management strategies to meet an identified need will not be shown as meeting a need for a political subdivision if the political subdivision in question objects to inclusion of the strategy for the political subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.
- (f) Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.
- (g) RWPGs shall report the following:
  - (1) Recommended water management strategies and the associated results of all the potentially feasible water management strategy evaluations by WUG and WWP. If a WUG or WWP lies in one or more counties and or RWPA's and or river basins, data will be reported for each river basin, RWPA, and county.
  - (2) Calculated planning safety factors for each WUG and WWP included in the RWP assuming all recommended water management strategies are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended water management strategies for each entity; divided by that entity's total projected water demand, within the planning decade. The resulting calculated safety factor shall be presented in the plan by entity and decade for every WUG and WWP.

- (3) Fully evaluated Alternative Water Management Strategies included in the adopted RWP shall be presented together in one place in the RWP.

## **Subchapter D – Impacts, Drought Response, Policy Recommendations, and Implementation**

### **§357.40. Impacts of Regional Water Plan**

- a) RWPs shall include a quantitative description of the socioeconomic impacts of not meeting the identified water needs pursuant to §357.33(c).
- b) RWPs shall include a description of the impacts of the RWP regarding:
  - (1) Agricultural resources pursuant to §357.34(d)(3)(c);
  - (2) Other water resources of the state including other water management strategies and groundwater and surface water interrelationships pursuant to §357.34(d)(4);
  - (3) Threats to agricultural and or natural resources identified pursuant to §357.34(d)(5);
  - (4) Third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas pursuant to §357.34(d)(7);
  - (5) Major impacts of recommended water management strategies on key parameters of water quality pursuant to §357.34(d)(8); and
  - (6) Effects on navigation.
- c) RWPs shall include a summary of the identified water needs that remain unmet by the RWP.

### **§357.41. Consistency with Long-term Protection of Water Resources, Agricultural Resources, and Natural Resources**

RWPGs shall describe how RWPs are consistent with the long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles in §358.3(4) and (8) of this title.

### **§357.42. Drought Response Information, Activities, and Recommendations**

- (a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, drought of record conditions based on the following subsections.
- (b) RWPGs shall conduct an overall assessment of current preparations for drought within the RWPA including a description of how water suppliers in the RWPA identify and respond to the onset of drought. This may include information from local drought contingency plans.



- (c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with §357.32 of this title, including:
  - (1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;
  - (2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and
  - (3) Triggers and actions developed in (1) and (2) of this subsection may consider existing triggers and actions associated with existing drought contingency plans.
- (d) RWPGs will collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. In accordance with Texas Water Code, §16.053(r), this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and submitted separately to the EA in accordance with guidance to be provided by EA.
- (e) RWPGs will provide general descriptions of local drought contingency plans that involve making emergency connections between water systems and or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d).
- (f) RWPGs may designate recommended and alternative drought management water management strategies and other recommended drought measures in the RWP including:
  - (1) List and description of the recommended drought management water management strategies and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended drought management water management strategies;
  - (2) List and description of alternative drought management water management strategies and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative drought management water management strategies;
  - (3) List of all potentially feasible drought management water management strategies that were considered and or evaluated by the RWPG but not recommended; and
  - (4) List and summary of any other recommended drought management measures, if any, that are included in the RWP, including associated triggers if applicable.

- (g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWP in the event that the existing water supply sources become temporarily unavailable to the WUGs and WWP due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:
  - (1) have existing populations less than 7,500;
  - (2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and
  - (3) All county-other WUGs.
- (h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.
- (i) RWPGs shall make drought preparation and response recommendations regarding:
  - (1) Development of, content contained within, and implementation of local drought contingency plans required by the Commission;
  - (2) Current drought management preparations in the RWPA including:
    - (A) drought response triggers; and
    - (B) responses to drought conditions;
  - (3) The Drought Preparedness Council and the State Drought Preparedness Plan; and,
  - (4) Any other general recommendations regarding drought management in the region or state.
- (j) The RWPGs shall develop region-specific model drought contingency plans.

**§357.43. Regulatory, Administrative, or Legislative Recommendations**

- (a) The RWP shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.
- (b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWP recommendations for all or parts of river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting

literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

- (1) A RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in section 358.2(a) of this title.
- (2) For every river and stream segment that has been designated as a unique river or stream segment by the legislature, during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended water management strategies. The assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.
- (c) Unique Sites for Reservoir Construction. A RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at section 358.2(a) of this title shall be used to determine if a site is unique for reservoir construction.
- (d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions.
- (e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.
- (f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

#### **§357.44. Infrastructure Financing Analysis**

RWPGs shall assess and quantitatively report on how individual local governments, regional authorities, and other political subdivisions in their RWPA propose to finance recommended water management strategies.

#### **§357.45. Implementation and Comparison to the Previous Regional Water Plan**

- (a) RWPGs shall describe the level of implementation of previously recommended water management strategies. Information on the progress of implementation of all water management strategies that were recommended in the previous RWP, including conservation and drought management water management strategies; and the implementation of projects that have affected progress in meeting the state's future water needs.
- (b) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:
  - (1) Water demand projections;
  - (2) Drought of record and hydrologic and modeling assumptions used in planning for the region;
  - (3) Groundwater and surface water availability, existing water supplies, and identified water needs for WUGs and WWPs; and
  - (4) Recommended and alternative water management strategies.

#### **Subchapter E – Adoption, Submittal, and Amendments to Regional Water Plans**

#### **§357.50. Adoption, Submittal, and Approval of Regional Water Plans**

- (a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (e)(2) below, for approval and inclusion in the state water plan.
- (b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP . The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG.
- (c) The RWPGs shall distribute the IPP in accordance with §357.21(d)(5).
- (d) The RWPGs shall solicit, and consider the following comments when adopting a RWP:
  - (1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;
  - (2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and

- (3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.
- (e) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.
- (1) RWPs shall include:
    - (A) The technical report and data prepared in accordance with this chapter and the EA's specifications;
    - (B) An executive summary that documents key RWP findings and recommendations; and
    - (C) Summaries of all written and oral comments received pursuant to §357.50(d) of this title, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under §357.50(d) of this title.
  - (2) RWPGs shall submit regional plans to the EA according to the following schedule:
    - (A) Initially prepared plans are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.
    - (B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's planning database system. All changes and corrections to this information must be entered into the Board's database prior to submittal of an adopted plan.
    - (C) The RWPG will transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.
    - (D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code, §16.053(i).
    - (E) Once approved by the Board, RWPs will be made available on the Board website.
- (f) The RWPGs shall submit in a timely manner to the EA information on any known interregional conflict between RWPs.

- (g) The RWPGs shall modify the RWP to incorporate Board resolutions of interregional conflicts.
- (h) The RWPGs shall seek to resolve conflicts with other RWPGs and shall participate in any Board sponsored efforts to resolve interregional conflicts.
- (i) Approval of RWPs by the Board – The Board may approve a RWP only after it has determined that the RWP complies with statute and rules.
- (j) Upon receipt of a RWP adopted by the RWPG, the Board will consider approval of such plan based on the following criteria:
  - (1) The Board shall verify adoption of the RWP by the RWPG.
  - (2) The Board shall approve the plan only after it considers any information from RWPGs of the existence of an interregional conflict and finds that no interregional conflict exists. The Board shall not consider approval of a RWP unless all RWPs which could contain conflicts have also been submitted to the Board for approval, or the Board determines that such plans are not likely to be submitted.
- (k) Board Adoption of State Water Plan - RWPs approved by the Board pursuant to this chapter shall be incorporated into the state water plan as outlined in §358.4.

**§357.51. Amendments to Regional Water Plans**

- (a) Local water planning amendment requests. A political subdivision in the RWPA may request a RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. A RWPG must formally consider such request within 180 days after its receipt and shall amend its adopted RWP if it determines an amendment is warranted. If the political subdivision is not satisfied with the RWPG's decision on the issue, it may file a petition with the EA to request Board review the decision and consider changing the approved RWP. The political subdivision shall send a copy of the petition to the chair of the affected RWPG.
  - (1) The petition must state:
    - (A) the changed condition or new information that affects the approved RWP;
    - (B) the specific sections and provisions of the approved RWP that are affected by the changed condition or new information;
    - (C) the efforts made by the political subdivision to work with the RWPG to obtain an amendment; and
    - (D) the proposed amendment to the approved RWP.

- (2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The political subdivision that submitted the petition will receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, the EA will present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA will provide the RWPG, the political subdivision submitting the petition, and any political subdivision determined by the EA to be affected by the issue 30 days notice.
- (b) Major Amendments to RWPs and State Water Plan. A RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(d) of this title. An amendment is major if it does not meet the criteria of subsections (c), (d) or (e) of this section. A RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.
- (1) Initiation of a Major Amendment. An entity may request a RWPG amend its adopted RWP. A RWPG's consideration for action to initiate an amendment may occur at a regularly scheduled meeting.
  - (2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment as defined in §357.21(d). The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in §357.21(d).
  - (3) The proposed major amendment:
    - (A) Shall not result in an overallocation of an existing or planned source of water;
    - (B) Shall not produce unmet needs new to the adopted RWP; and
    - (C) Shall conform with rules applicable to RWP development as defined in subchapters C and D of this chapter.
  - (4) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled RWPG meeting held in accordance with §357.21(b) following the 30-day public comment period held in accordance with §357.21(d). The amendment shall include response to comments received.
  - (5) Board Approval of Major Amendment. After adoption of the major amendment, the RWPG shall submit the amendment to the Board which shall consider approval of the amendment at its next regularly scheduled meeting following EA review of the amendment.

**(c) Minor Amendments to RWPs and State Water Plan.**

- (1) Minor Amendment to RWP.** A RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.
  - (2) EA Pre-Adoption Review.** The EA shall evaluate the proposed minor amendment prior to the RWPG's vote to adopt the amendment. An amendment is minor if it meets the following criteria:
    - (A)** does not result in overallocation of an existing or planned source of water;
    - (B)** does not relate to a new reservoir;
    - (C)** does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;
    - (D)** does not have a significant substantive impact on water planning or previously adopted management strategies; and
    - (E)** does not delete or change any legal requirements of the plan.
  - (3) Determination by EA.** If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.
  - (4) RWPG Public Meeting.** After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(c). The public shall have an opportunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning.
  - (5) Board Approval of Minor Amendment.** After adoption of the minor amendment, the RWPG shall submit the amendment to the Board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.
- (d) Amendment for Water Planning for A Clean Coal Project.** An amendment to a RWP or the state water plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code, §5.001, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, a RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:
- (1)** the amendment does not significantly change the RWP; or
  - (2)** the amendment does not adversely affect other water management strategies in the RWP.
- (e) Substitution of Alternative Water Management Strategies.** After notice is provided in accordance with §357.21(c), RWPGs may substitute one or more evaluated alternative



water management strategies for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the alternative water management strategy is capable of meeting the same water need. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

- (f) Amending the State Water Plan. Following amendments of RWPs, including substitutions of alternative water management strategies, the Board shall make any necessary amendments to the state water plan as outlined in §358.4.

## **Subchapter F – Consistency and Conflicts in Regional Water Plans**

### **§357.60. Consistency of Regional Water Plans**

- (a) RWPGs shall submit to the development Board a RWP that is consistent with the guidance principles and guidelines outlined in §357.20 of this chapter. Information provided shall be based on data provided or approved by the Board in a format consistent with the guidelines of subchapters C and D of this chapter and guidance by the EA.
- (b) For the purposes of the Texas Water Code, §16.053(j) (relating to Board Financial Assistance) projects proposed to the Board for funding will be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:
  - (1) Is an enhancement of a current water supply identified in the analysis developed under §357.32 of this title as meeting a demand, even though the project is not specifically recommended in the RWP;
  - (2) Involves a minor modification to an existing surface water right that is not in conflict with the RWP; and
  - (3) Is meeting a need in a manner consistent with the plan developed under subchapters C and D of this chapter.
  - (4) For the purposes of the Texas Water Code, §16.053(j), projects proposed to the Board for funding to meet any need identified in an approved RWP for which there is not a recommended water management strategy in such plan will be considered by the Board not to be consistent with the approved RWP.
  - (5) For the purposes of the Texas Water Code, §16.053(k) (relating to Board Waivers), the Board may consider, among other factors, changed conditions if a political subdivision requests a waiver of the Texas Water Code, §16.053(j) for a project proposed to the Board for funding to meet a need in a manner that is not consistent with the manner the need is addressed in an approved RWP. The Board shall request the members of any affected RWPG to provide input on the request for waiver of the Texas Water Code, §16.053(j).

(c) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title and this chapter. RWPGs shall consider and use as a guide the state water plan and local water plans provided for in the Texas Water Code, §16.054 (relating to Local Water Planning.)

**§357.61. Intraregional Conflicts in Development of Regional Water Plans**

The EA shall provide technical assistance within available resources to the RWPGs requesting such assistance in performing regional water planning activities and if requested, may facilitate resolution of conflicts within RWPAs.

**§357.62. Interregional Conflicts**

(a) In the event the Board finds that an interregional conflict exists between adopted RWPs, the EA may use the following process:

- (1) notify the affected RWPGs of the nature of the interregional conflict;
- (2) request affected RWPGs assistance in resolving the conflict; and
- (3) negotiate resolutions of conflicts with RWPGs as determined by the EA.

(b) In the event the negotiation is unsuccessful, the EA may:

- (1) determine a proposed recommendation for resolution of the conflict;
- (2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the Texas Register and in a newspaper of general circulation in each county located in whole or in part in the RWPAs involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(d) of this title in the RWPAs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted and to each affected RWPG;
- (3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, political subdivisions, and members of the public on the issues identified by the Board as unresolved problems; and
- (4) make a recommendation to the Board for resolution of the conflict.

(c) The Board shall consider the EA's recommendation and any written statements by a

representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.

- (d) The EA shall notify affected RWPGs of Board's decision and shall direct changes to the affected RWPGs.

**§357.63. Failure of a Regional Water Plan to Meet Regional Water Planning Requirements**

- (a) In the event the Board finds that the RWP does not meet the requirements of the Texas Water Code, §16.053, this chapter, and Chapter 358 of this title, the Board shall direct the RWPG to make changes necessary for compliance with legal requirements.
- (b) In the event the Board directs the RWPG to make changes to its RWP, the RWPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

**§357.64. Conflicts Between Regional Water Plans and Groundwater Management Plans**

- (a) A groundwater conservation district may file a written petition with the EA stating that a potential conflict exists between the district's approved management plan developed under Texas Water Code, §36.1071 (relating to Management Plans) and the approved state water plan. A copy of the petition shall be provided to the affected RWPG. The petition must state:
  - (1) the specific nature of the conflict;
  - (2) the specific sections and provisions of the approved management plan and approved state water plan that are in conflict; and
  - (3) the proposed resolution to the conflict.
- (b) If the EA determines a conflict exists, the EA will provide technical assistance to and coordinate with the groundwater conservation district and the affected RWPG to resolve the conflict. Coordination may include any of the following processes:
  - (1) requiring the RWPG to respond to the petition in writing;
  - (2) meeting with representatives from the groundwater conservation district and the RWPG to informally mediate the conflict; and/or
  - (3) coordinating a formal mediation session between representatives of the groundwater conservation district and the RWPG.

- (c) If the parties do not reach resolution, the EA will recommend a resolution to the conflict to the Board within 60 days of the date the mediation is completed. Notice shall be provided at least 15 days prior to the date of the Board meeting to discuss the proposed resolution. The Board may:
- (1) revise an approved RWP; and
  - (2) revise a district's approved management plan.
- (d) If the Board requires a revision to the groundwater conservation district's approved management plan, the Board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the Board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and Board comments, prepare, revise, and adopt its plan, and submit the revised plan to the Board pursuant to Chapter 356 of this title (relating to Groundwater Management.) If the groundwater conservation district disagrees with the decision of the Board, the district may appeal the decision to a district court in Travis County, Texas.
- (e) If the Board requires a revision to the approved RWP, the Board shall provide information to the RWPG on what revisions are required and why. The RWPG shall prepare the revisions as a major amendment to their approved RWP pursuant to §357.51(b) of this chapter.
- (f) At the Board's discretion, the Board shall include in the state water plan a discussion of the conflict and its resolution.

## **ATTACHMENT D**

Preamble for Repeal, 31 TAC Chapter 357

TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
Chapter 357. Regional Water Planning Guidelines

The Texas Water Development Board (board) proposes for repeal chapter 357 relating to regional water planning guidelines. This chapter is proposed for repeal because a new chapter 357 is being proposed for adoption in today's *Texas Register*. The board determined that due to the extensive re-organization of proposed new chapter 357 it is more efficient to repeal the entire chapter than to propose amendments for the changes. The revision of chapter 357 results from statutory changes and the board's required five year review of regional planning areas, regional water planning groups and the guiding principles of the state water plan.

The repeal of chapter 357 in its entirety provides the public with an opportunity to more clearly understand the proposed new chapter 357 without the confusion of extensive amendments. chapter. The current chapter 357 contains sixteen sections, <\*>357.1 through 357.16. These sections affect the work of the state's regional water planning groups and direct that certain analyses occur to determine the state's water supplies, water needs and water management strategies. Chapter 357 is based on Tex. Water Code <\*>16.053(f) which requires that the board adopt rules to provide for procedures for adoption of the regional water plans by the regional water planning groups and for approval of same by the board. That statute also requires the board to adopt rules governing procedures for carrying out the responsibilities of regional water planning. Further requirements for rule-making relevant to this chapter are Tex. Water Code <\*> 16.053(h)(11) requiring rules relating to minor amendments to regional water plans and <\*> 16.053(r) requiring rules that provide reasonable flexibility for timely amendment of a regional water plan to facilitate planning for water supplies needed for a clean coal project. All of these required rules are in the chapter 357 proposed for repeal herein and in the proposed new chapter 357.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there is no fiscal impact to state or local governments as a result of this proposed repeal particularly since rules governing the same subject matter will be revised and proposed for adoption simultaneously with this repeal.

Ms. Carolyn Brittin, Deputy Executive Administrator has determined that there are public benefits to repealing this chapter because the proposed new chapter will be more streamlined and will clarify the regional water planning process. Ms. Brittin has also determined there are no increased costs to the public applicants resulting from the repeal of this chapter. Additionally, Ms. Brittin has determined that there are no economic costs to persons required to comply with the rules since the rules are do not impose mandates on the public, but provide statutorily required guidance to the regional planning groups and provide notice to the public regarding the process for development and the content of the regional water plans.

These rules affect Tex. Water Code <\*>16.053 relating to regional water plans.

This proposed repeal of chapter 357 has been reviewed by legal counsel who has found that the repeal is within the TWDB's legal authority.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 475-2053.

## **ATTACHMENT E**

**Preamble for Adoption, 31 TAC Chapter 358, Subchapter A  
and Proposed Rule**



TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 358. State Water Planning Guidelines  
Subchapter A. State Water Plan Development

The Texas Water Development Board (board) proposes for adoption new subchapter A, chapter 358 relating to state water plan development. The subchapter is being proposed for adoption simultaneously with a proposal for repeal of current subchapter A in today's *Texas Register*. The board has determined that the changes in this proposed new subchapter are necessary to improve clarity, eliminate redundancy and address statutory changes not currently reflected in subchapter A.

Proposed new subchapter A of chapter 358 is based on the statutory commands in Tex. Water Code <\*> 16.051 (d) which requires the board to adopt guidance principles as a rule and to review and update those principles every five years. The board has reviewed the principles in conjunction with the Texas Department of Agriculture, Texas Commission on Environmental Quality and Texas Parks and Wildlife Department and provides updated guidance principles in this new proposed subchapter.

Proposed new <\*>358.1 relating to applicability states that this subchapter governs the board's preparation, development, formulation and adoption of the state water plan. Proposed new <\*>358.2 relating to definitions also provides acronyms for commonly used phrases in the planning process such as RWPG for "regional water planning group" at proposed subsection (a)(5).

Proposed new <\*>358.3 relating to guidance principles is required by Tex. Water Code <\*>16.051(d) as discussed above; the board has reviewed and updated the principles with input from the aforementioned agencies and therefore proposes for adoption new <\*>358.3. There are twenty-seven guidance principles in this proposed new section. New principles include a priority on preparation for and response to drought conditions in proposed subsection (a)(1) and water supply plans in a drought of record in proposed subsection (a)(2). Although considerations relating to drought have been part of the state water plan in the past, these principles place a increased emphasis on planning for water shortages resulting from drought conditions. Similarly, proposed subsection (8) requires water management strategies to respond to droughts. A renewed focus on environmental water needs and use of environmental information is stated in proposed subsections (21) and (22); these changes result from the development of the environmental flows rules by the Commission on Environmental Quality. This proposed new <\*>358.3 contains principles directed to regional water planning groups because the regional water plans are an integral part of the state water plan.

Proposed new <\*>358.4 relating to guidelines describes the process within the board for development of the state water plan; the purpose is to inform the public about the process for adoption of the plan in proposed subsection (a); and the minimum contents of the plan in proposed subsection (b). Proposed subsection (a) describes the incorporation of the regional water plans into the state water plan and the board's notice of intent to adopt the plan and to hold

a public hearing on the proposed plan. Proposed subsection (b) lists the topics that are discussed in the state and regional water plans which includes a description of future conditions in proposed subsection (b)(4); recommendations from the regional water planning groups in proposed subsections (b)(5) and (6), new proposed subsection (b)(7) relating to prior implementation of water management projects and a discussion of which projects were funded by the board and an increased emphasis on preparations for and responses to drought conditions in proposed subsection (b)(8).

Tex. Water Code <\*>16.051(d) is affected by these proposed rules.

These rules have been reviewed by legal counsel and are determined to be within the board's legal authority.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any additional estimated costs to state and local governments as a result of enforcing or administering the rule for the first five years these rules will be in effect. The guidelines and guidance do not impose new costs on the public or on the regional water planning groups as the principles and guidelines are similar to the current principles and guidelines and the new requirements will not cause significant cost increases in development of plans.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. These rules provide notice to the public and to the regional water planning groups about the principles used in developing the state water plan and provide guidance to assist regional water planning groups, whose workload will be significantly increased in the event the performance of additional tasks is deemed necessary. Further, the political subdivisions applying for funds to cover the cost of regional planning generally receive grants from the board for this purpose. There is no expected reduction in the costs to the local governments.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering these rules for the first five years that these rules will be in effect. These proposed rules do not affect the revenues of state or local governments.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that these rules do not impose costs to the public as the political subdivisions who are eligible applicants for regional water planning already perform similar functions if they have voluntarily assist the regional water planning groups. The benefit to the public is clearer descriptions of the process and the principles guiding the development of the state water plan. Additionally, these rules provide a public benefit through improved clarity and elimination of unnecessary rules that will assist the public in understanding development and purposes of water planning throughout the state. These public benefits will be effective for the first five years the rules are in effect.

Ms. Brittin has also determined that there are no probable economic costs to persons required to comply with these rules. These rules do not require any individuals to perform any particular

functions. The regional water planning groups are established by statute and also benefit from a funding source at the board.

Ms. Brittin has determined that these rules do not constitute a major environmental rule because they are not based on a standard set by federal law, do not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and are adopted pursuant to express state laws under Tex. Water Code, chapter 16.

Ms. Brittin has determined that these rules will not have any impact on private property rights. These rules provide guidance to the regional water planning groups and notice to the public relating to the principles that guide development of the state water plan. These rules do not have any impact on private persons or private property as they do not direct any actions involving private property.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 475-2053.

TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 358. State Water Planning Guidelines  
Subchapter A. State Water Plan Development

**§358.1 Applicability**

This subchapter governs the Board's preparation, development, formulation, and adoption of the state water plan.

**§358.2 Definitions**

The following words and acronyms, used in this chapter, have the following meanings.

- (1) Board – The Texas Water Development Board.
- (2) Commission – The Texas Commission on Environmental Quality.
- (3) Regional water plan – The plan adopted or amended by a regional water planning group pursuant to Texas Water Code, §16.053 (relating to Regional Water Plans) and Chapter 357 of this title (relating to Regional Water Planning Guidelines).
- (4) Regional water planning area – Area designated pursuant to Texas Water Code, §16.053 and Chapter 357 of this title.
- (5) Regional water planning group (RWPG) – Group designated pursuant to Texas Water Code, §16.053 and Chapter 357 of this title.
- (6) River and stream segments of unique ecological value – Those river or stream segments that may be identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan based on the following criteria:
  - (A) Biological function – stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;
  - (B) Hydrologic function – stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;
  - (C) Riparian conservation areas – stream segments which are fringed by significant areas in public ownership including state and federal refuges, wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas

- managed for conservation purposes under a governmentally approved conservation plan;
- (D) High water quality/exceptional aquatic life/high aesthetic value – stream segments and spring resources that are significant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or
  - (E) Threatened or endangered species/unique communities – sites along stream where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species; and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.
- (7) Site of unique value for construction of reservoirs – Those sites identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan where:
- (A) Site-specific reservoir development is recommended as a specific water management strategy or in an alternative long-term scenario in an adopted regional water plan; or
  - (B) The location, hydrologic, geologic, topographic, water availability, water quality, environmental, cultural, and current development characteristics, or other pertinent factors make the site uniquely suited for reservoir development to provide water supply for:
    - (i) The current planning period; or
    - (ii) Where it might reasonably be needed to meet needs beyond the 50-year planning period.
- (8) State drought preparedness plan – A plan, separate from the State Water Plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code, §16.0551 (relating to State Drought Preparedness Plan).
- (9) State drought response plan – A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code, §16.055 (relating to Drought Response Plan).
- (10) State water plan – The most recent comprehensive statewide water plan adopted by the Board under Texas Water Code, §16.051 (relating to State Water Plan).
- (11) Water management strategy – A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply.

### **§358.3 Guidance Principles**

Development of the state water plan shall be guided by the following principles.

- (1) The state water plan shall provide for the preparation for and response to drought conditions.
- (2) The regional water plans and state water plan shall serve as water supply plans under drought of record conditions.

- (3) Consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources.
- (4) Regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the regional water planning area and state including identification of those policies and actions that may be needed to meet Texas' water supply needs and preparation for and response to drought conditions.
- (5) RWPG decision-making shall be open to and accountable to the public with decisions based on accurate, objective and reliable information with full dissemination of planning results except for those matters made confidential by law.
- (6) The RWPG shall establish terms of participation in its water planning efforts that shall be equitable and shall not unduly hinder participation.
- (7) Consideration of the effect of policies or water management strategies on the public interest of the state, water supply, and those entities involved in providing this supply throughout the entire state.
- (8) Consideration of all water management strategies the regional water plan determines to be potentially feasible when developing plans to meet future water needs and to respond to drought so that cost effective water management strategies which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are considered and approved.
- (9) Consideration of opportunities that encourage and result in voluntary transfers of water resources, including but not limited to regional water banks, sales, leases, options, subordination agreements, and financing agreements.
- (10) Consideration of a balance of economic, social, aesthetic, and ecological viability.
- (11) For regional water planning areas without approved regional water plans or water providers for which revised plans are not developed through the regional water planning process, the use of information from the adopted state water plan and other completed studies that are sufficient for water planning shall represent the water supply plan for that area or water provider.
- (12) All surface waters are held in trust by the state, their use is subject to rights granted and administered by the Commission, and the use of surface water is governed by the prior appropriation doctrine, unless adjudicated otherwise.
- (13) Existing water rights, water contracts, and option agreements shall be protected. However, potential amendments of water rights, contracts and agreements may be considered and evaluated. Any amendments will require the eventual consent of the owner.
- (14) The production and use of groundwater in Texas is governed by the rule of capture doctrine unless and to the extent that such production and use is regulated by a groundwater conservation district, as codified by the legislature at Texas Water Code, §36.002 (relating to Ownership of Groundwater).
- (15) Consideration of recommendations of river and stream segments of unique ecological value to the legislature for potential protection.

- (16) Consideration of recommendation of sites of unique value for the construction of reservoirs to the legislature for potential protection.
- (17) Consideration of water planning and management activities of local, regional, state, and federal agencies, along with existing local, regional, and state water plans and information and existing state and federal programs and goals.
- (18) Designated water quality and related water uses as shown in the state water quality management plan shall be improved or maintained.
- (19) Coordination of water planning and management activities of RWPGs to identify common needs and issues and achieve efficient use of water supplies, including the Board and other relevant RWPGs, working together to identify common needs, issues, and challenges while working together to resolve conflicts in a fair, equitable, and efficient manner.
- (20) The water management strategies identified in approved RWPs to meet needs shall be described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved RWP.
- (21) The evaluation of water management strategies shall use environmental information in accordance with the Commission's adopted environmental flow standards under 30 Texas Administrative Code, Chapter 298 (relating to Environmental Flow Standards for Surface Water) or, in basins where standards have not been adopted, information from existing site-specific studies or state consensus environmental planning criteria.
- (22) Consideration of environmental water needs including instream flows and bay and estuary inflows, including adjustments to water management strategies to provide for appropriate, environmental water needs including instream flows and bay and estuary needs. Consideration shall be consistent with the Commission's adopted environmental flow standards under 30 Texas Administrative Code, Chapter 298 in basins where standards have been adopted.
- (23) Planning shall be consistent with all laws applicable to water use for the state and regional water planning area.
- (24) The inclusion of ongoing water development projects that have been permitted by the Commission or a predecessor agency.
- (25) Specific recommendations of water management strategies shall be based upon identification, analysis, and comparison of all water management strategies the RWPG determines to be potentially feasible so that the cost effective water management strategies which are environmentally sensitive are considered and adopted unless the RWPG demonstrates that adoption of such strategies is not appropriate. To determine cost-effectiveness, the RWPGs will use the process described in §357.34(c) of this title and, to determine environmental sensitivity, the RWPGs shall use the process described in §357.34(c) of this title.
- (26) RWPGs shall conduct their planning to achieve efficient use of existing water supplies, explore opportunities for and the benefits of developing regional water supply facilities or providing regional management of water facilities, coordinate the actions of local and regional water resource management agencies, provide substantial involvement by the public in the decision-making process, and provide full dissemination of planning results.
- (27) RWPGs must consider existing regional water planning efforts when developing their plans.

## **§358.4 Guidelines**

- (a) The executive administrator shall prepare, develop, and formulate the state water plan and the Board shall adopt a state water plan pursuant to the schedule in Texas Water Code, §16.051. The executive administrator shall identify the beginning of the 50-year planning period for the state and regional water plans. The executive administrator shall incorporate into the state water plan presented to the Board those regional water plans approved by the Board pursuant to Texas Water Code, §16.053 and Chapter 357 of this title. The Board shall, not less than 30 days before adoption or amendment of the state water plan, publish notice in the Texas Register of its intent to adopt a state water plan and shall mail notice to each regional water planning group. The Board shall hold a hearing, after which it may adopt a water plan or amendments thereto.
- (b) The state water plan shall include summaries for the state and from approved regional water plans, when available, which shall address, at a minimum, the following topics:
  - (1) Basis for planning, including sections on planning history, Texas water statutes, rules, regulations, and Texas' water supply institutions;
  - (2) Description of methods used for projecting future water demands which shall include methods for projecting future population and water demands for municipal and associated commercial and institutional uses, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;
  - (3) Description of methods to address water quality problems related to water supply, to ensure public health, safety and welfare, to further economic growth, to protect agricultural and natural resources, to determine water supply availability, and to address drought response planning;
  - (4) Description of future conditions which shall, at a minimum, include:
    - (A) Demands for water;
    - (B) Supplies currently available;
    - (C) Comparison of water demand and supply to identify surpluses or needs of water;
    - (D) Social and economic impact of not meeting needs;
    - (E) Recommended solutions to meet needs;
    - (F) Needs for which no feasible water management strategy exists; and
    - (G) Descriptions in subparagraphs (A)-(F) of this paragraph shall be presented for each county and basin by the major providers of water for municipal uses and for the following water use categories: municipal and associated commercial and institutional uses; manufacturing; irrigation; steam electric power generation; mining; and livestock watering;
  - (5) Consideration of recommendations of river and stream segments of unique ecological value and sites of unique value for construction of reservoirs to the legislature for potential protection;



- (6) Regulatory, administrative, and legislative recommendations that the Board believes are needed and desirable to facilitate the orderly development, management, and conservation of water resources, to facilitate more voluntary water transfers, and the preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the entire state;
- (7) The progress in meeting future water needs, including an evaluation of implementation of all water management strategies that were recommended in the previous state water plan and projects funded by the Board; and
- (8) Current and planned preparations for, and responses to, drought conditions in the state to be used in the development of the state's drought preparedness plan by the Drought Preparedness Council.

## **ATTACHMENT F**

**Preamble for Repeal, 31 TAC Chapter 358, Subchapter A**

TEXAS ADMINISTRATIVE CODE  
TITLE 31. NATURAL RESOURCES  
PART 10. TEXAS WATER DEVELOPMENT BOARD  
CHAPTER 358. State Water Planning Guidelines  
Subchapter A. State Water Plan Development

The Texas Water Development Board (board) proposes repeal of subchapter A of chapter 358 because a proposed new subchapter A of chapter 358 is published in today's *Texas Register*. The board determined that the revisions being proposed to this chapter and to chapter 357 will be more clear if this chapter is repealed instead of amended.

Chapter 358, subchapter A is based on rulemaking authority in Tex. Water Code <\*> 16.051 and 16.053. Section 16.051(c) requires the board to define and designate river basins and watersheds by rule and <\*>16.051(d) requires the board to adopt guidance principles for water planning as a rule.

The Tex. Water Code <\*>16.051(d) also requires the board to update the guidance principles in conjunction with the Texas Commission on Environmental Quality, the Parks and Wildlife Department and the Department of Agriculture. This requirement is another reason for repeal of the entire chapter. The guidance principles were last updated more than five years ago and due to legislative changes, it is more efficient to repeal the entire subchapter A and to propose a new subchapter A.

Subchapter B of chapter 358 remains unchanged because it is related to data collection which is relevant to state water plan development and which was recently amended to reflect statutory changes.

Ms. Carolyn Brittin, Deputy Executive Administrator, has determined that there is no fiscal impact to state or local governments as a result of this proposed repeal particularly since these rules will be revised and proposed for adoption simultaneously with this repeal.

Ms. Carolyn Brittin, Deputy Executive Administrator has determined that there are public benefits to repealing this subchapter because the proposed new subchapter will be more streamlined and will clarify the state water planning process. Ms. Brittin has also determined there are no increased costs to the public resulting from the repeal of this subchapter. Additionally, Ms. Brittin has determined that there are no economic costs to persons required to comply with the rules since the rules do not impose mandates on the public, but provide statutorily required guidance to the regional planning groups and provide notice to the public regarding the state water plan.

The TWDB requests comments on this proposed repeal of Chapter 358, subchapter A relating to state water plan development.

These rules affect Tex. Water Code <\*>16.051 relating to state water plan: drought, conservation, development, and management: effect of plan.

This proposed repeal of chapter 358, subchapter A has been reviewed by legal counsel who has found that the repeal is within the TWDB's legal authority.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 475-2053.