

REGION C WATER PLANNING GROUP

TO: REGION C WATER PLANNING GROUP
FROM: DAN BUHMAN, CHAIR
SUBJECT: JULY 11, 2025 PUBLIC MEETING
DATE: JULY 8, 2025

This memorandum will serve as a notice that the Region C Water Planning Group (RCWPG) is holding a public meeting at **3:00 P.M. on Friday July 11, 2025**, at the **North Central Texas Council of Governments, 616 Six Flags Drive, Centerpoint Two Building, First Floor Transportation Council Room, Arlington, Texas, 76011**. An agenda (including information on how to participate in the public meeting) has been prepared for the meeting and is attached to this memorandum. The following is a brief overview of the agenda items to be discussed with relevant materials and handouts.

OPEN MEETING

- I. ROLL CALL
- II. PUBLIC COMMENTS (Limited to 3 minutes per speaker)
- III. PRIMARY ACTION ITEMS FOR CONSIDERATION
 - A. Announcement of Region C RWPG voting member vacancies: Denis Qualls representing Municipalities; Call for nominations to fill vacancy and vote to fill vacancy.

This action item will consider recommendations for replacement of RCWPG members who have resigned. Denis Qualls resigned from the RCWPG effective April 1, 2025. Denis nominated Matt Penk to fill the Municipalities interest vacancy.

Agenda Item III.A: Recommendation for Matt Penk as the replacement for Denis Qualls
 - B. Announcement of interregional conflict declaration and mediation; Consider appointing up to four (4) representatives authorized to negotiate on behalf of the Region C Water Planning Group in a TWDB facilitated mediation with Region D regarding a potential conflict between the Region C and Region D 2026 Initially Prepared Plans.

The TWDB declared that an interregional conflict exists between the Region C and Region D 2026 Initially Prepared Plans on June 26, 2025.

The TWDB recommended facilitated mediation between Region C and Region D planning group representatives. This action item will consider appointing up to four (4) representatives authorized to negotiate on behalf of the Region C Water Planning Group.

Legal/Special Conditions (from TWDB Board Meeting):

- 1. Require the Region C and Region D planning groups to appoint, by July 14, 2025, up to four representatives per region authorized to negotiate on their behalf in a facilitated mediation to occur by July 31, 2025.***
- 2. Require the Executive Administrator to appoint up to two representatives to be available as resources in the facilitated mediation.***
- 3. Limit participation in that facilitated mediation process to the representatives identified in items 1 and 2 and the chosen mediation staff.***
- 4. The Executive Administrator will report back to the Board at a regularly scheduled Board meeting.***

Agenda Item III.B: Interregional Conflict Notification Letter and TWDB Board Meeting Agenda Item Memo Regarding a Potential Interregional Conflict

IV. ADJOURNMENT

The following items are enclosed with this memorandum:

- I. RCWPG Agenda – July 11, 2025
- II. Meeting Handouts
 - A. Agenda Item III.A – Recommendation for Matt Penk as the replacement for Denis Qualls
 - B. Agenda Item III.B – Interregional Conflict Notification Letter and TWDB Board Meeting Agenda Item Memo Regarding a Potential Interregional Conflict

Agenda Item III.A – Attachment

Recommendation for Matt Penk as the replacement for Denis Qualls



April 1, 2025

Mr. Dan Buhman, P.E., Chair
Region C Water Planning Group
c/o Trinity River Authority
P.O. Box 240
Arlington, Texas 76004-0240

RE: Resignation from Region C WPG and Recommendation for Municipal Replacement

Dear Mr. Buhman,

After 21 years of service to the City of Dallas and its Wholesale Customers, I have decided to retire from the City of Dallas, effective April 1, 2025. With my retirement from the City of Dallas, I am resigning from the Region C Water Planning Group also effective April 1, 2025.

I would like to recommend Mr. Matthew (Matt) Penk, P.E., CFM, Deputy Director of Capital Improvements for Dallas Water Utilities (DWU). Mr. Penk has 23 years of public service experience as a plant engineer, project manager, program manager, assistant director, and deputy director. Mr. Penk is responsible for the Capital Improvements Program at DWU which includes overall management for infrastructure planning, budgeting, scheduling, design, and construction of capital projects. The Capital Improvements Program has an annual budget of approximately \$370-500M and includes projects and programs to support the city's efforts toward economic development, underserved area programs, environmental protection and enhancement of quality-of-life through planning and construction of water supply and treatment; water distribution; wastewater collection and treatment; and flood protection and storm drainage management.

Prior to his appointment as Deputy Director, Matt was the Assistant Director for Capital Improvement Project Delivery which included the delivery of water, wastewater and stormwater capital improvement projects. Mr. Penk is a graduate of the University of Texas at Austin, a licensed professional engineer in the state of Texas, a certified Floodplain Manager, a board member for the North Texas Chapter of the Underground Construction Technology Association and is a member of the American Water Works Association.

It has been a pleasure serving on the Region C WPG representing municipal interests.

Sincerely,

Denis Qualls, P.E.
Superintendent, Planning

cc: Simone Kiel
Sarah Standifer, Director, Dallas Water Utilities
Matt Penk, P.E., Deputy Director, Capital Improvements

Matthew Brett Penk
3014 Fair Oak Dr.
Rowlett, TX 75089
mattpenk@verizon.net

Education

University of Texas at Austin (B.S. in Civil Engineering, May 2001)
McMurry University (1996-1998)

Experience

10/24 – present

Deputy Director, Dallas Water Utilities – Capital Improvements

Provide strategic direction and oversight for infrastructure and water supply planning, utility automation and integration, land & building utilization, and delivery of Water Utilities Department – Capital Improvement Program that has an annual value of approximately \$370-500M. Includes projects and programs to support the City's efforts toward economic development, unserved area programs, environmental protection, and enhancement of quality of life, including water supply, treatment, and distribution; wastewater collection and treatment; flood protection and storm drainage management. Responsible for approximately 193 positions.

11/17 – 10/24

Assistant Director, Dallas Water Utilities – Capital Delivery

Provided direction and overall management for delivery of the Water Utilities Department – Capital Improvement Program with annual value of approximately \$325-390M. Major duties included supervising program management staff, planning and development of capital budgets, and directing execution of capital projects to meet current and future department needs and regulatory requirements. Responsible for approximately 128 positions.

2/12 – 11/17

Program Manager, Dallas Water Utilities – Pipeline Project Management

Provided all management for planning, budgeting, scheduling, design, and construction of Water Utilities Department - Pipeline Program capital improvement projects including associated studies and capital-intensive projects to meet future water supply and wastewater collection demands, regulatory requirements, and improve existing system to ensure municipal infrastructure capabilities for collection and conveyance of sanitary sewer and distribution of drinking water. Major duties included supervising staff to ensure work is technically correct, meets all applicable standards for design and construction, and is completed in a timely manner; preparing and monitoring program's capital budget; overseeing maintenance of project status reports, data bases, and project records; responsible for hiring, training, allocation of work assignments, scheduling performance reviews, and disciplinary actions.

1/08 – 2/12

Relocations Section Manager, Dallas Water Utilities – Engineering Services

Managed the relocation, replacement and upgrade of DWU water & wastewater facilities with outside agency projects. Major duties included supervising staff to ensure all work was technically correct, met all applicable standards for engineering design, and was completed in a timely manner; approved project scope of work and Professional Service contract budgets to ensure fee was commensurate with scope of work; ensured all project cost estimates were correct and in accordance with departmental standards or project requirements; prepared and monitored section's capital budget; maintained project status reports, data bases, section and staff performance indicators, and project records; provided training and resources for staff.

6/06 – 1/08

Plant Engineer, Dallas Water Utilities – Southside Wastewater Treatment Plant

Provided technical support for plant operations and maintenance functions by providing engineering solutions and recommendations. Major duties included participation in the development and implementation of capital improvement projects; preparing engineering drawings, specifications and cost estimates for equipment, services, and chemicals; participated in plant projects to upgrade facilities and evaluate equipment and processes to determine methods to increase efficiency and to resolve technical problems; prepared annual reports, efficiency studies, and standard operating procedures; participated in the development and evolution of the plant's EMS; evaluated and reviewed pending regulatory legislation and other issues/trends affecting plant activities.

4/05 – 6/06

Project Engineer, Dallas Water Utilities - Relocations

Managed the design and implementation of water and wastewater relocation projects to clear the improvements of outside agencies. Additional duties included preparing Interlocal and Advanced Funding agreements, negotiating engineering contracts, and preparing cost estimates.

8/04 – 4/05

Project Manager, CPH Engineers, Inc.

Managed the design and permitting of private land development projects. Additional duties included the supervision of design and technical staff and reviewing/developing engineering plans and reports.

7/01 – 8/04

Project Engineer-Public Works and Transportation, City of Dallas

Designed, reviewed, and managed Public Works projects for paving, drainage, water and wastewater improvements. Additional duties included negotiating engineering contracts, preparing feasibility studies, and providing cost estimates for future street, alley, and sidewalk projects.

Leadership Statement

As a leader, I will personally grow and develop those under my direct supervision and within my programs to be better leaders and examples of the quality services we provide for our customers and the City of Dallas. I will seek continual improvement and provide transparent, sustainable leadership through communication, cooperation, flexibility, responsiveness, integrity, and personal development. My goal is to provide transformative leadership to inspire and empower others to reach their full potential by using my influence and experience.

Skills

Supervisory experience of design and technical staff
Capital budget planning, preparation and prioritization
Project management experience (design and construction)
Excellent communication and interpersonal skills
Experience dealing with outside entities and preparing interagency agreements
Operations experience
Proficient in Microsoft Excel, Word, Access, and PowerPoint
Experience in contract negotiations
Knowledge of City structure and department functions - diverse work experience

Certifications and Memberships

Licensed Professional Engineer in Texas (#96499)
Certified Floodplain Manager
Associate Water Asset Manager
Board Member – Underground Construction Technology Association North Texas
American Water Works Association
Chi Epsilon Honor Society

Matt Penk, P.E., CFM
Deputy Director – Capital Improvements
Dallas Water Utilities

Mr. Penk has over 23 years of public service experience as a plant engineer, project manager, program manager, assistant director and deputy director. In October 2024, Matt was appointed Deputy Director of Dallas Water Utilities (DWU). Mr. Penk is responsible for the Capital Improvements Program which includes overall management for infrastructure and water supply planning, utility automation and integration, land & building utilization, and the budgeting, scheduling, design and construction of capital projects. The Capital Improvements Program has an annual budget of approximately \$370-500M and includes projects and programs to support the city's efforts toward economic development, unserved area programs, environmental protection and enhancement of quality-of-life through water supply and treatment; water distribution; wastewater collection and treatment; and flood protection and storm drainage management.

Prior to his appointment as Deputy Director, Matt was the Assistant Director for Capital Improvement Project Delivery which included the delivery of water, wastewater and stormwater capital improvement projects. Mr. Penk is a graduate of the University of Texas at Austin, a licensed professional engineer in the state of Texas, a certified Floodplain Manager, a board member for the North Texas Chapter of the Underground Construction Technology Association and is a member of the American Water Works Association.

Agenda Item III.B - Attachment

**Interregional Conflict Notification Letter and TWDB Board Meeting
Agenda Item Memo Regarding a Potential Interregional Conflict**



P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

June 26, 2025

Mr. Dan Buhman and Mr. Jim Thompson
Region C and D Chairs

Transmitted via email: dan.buhman@trwd.com, wardk@trinityra.org and
longas@trinityra.org, jimthompson@wardtimber.com, kyledooley@rwrdr.org
Cc: ashley.harden@twdb.texas.gov, temple.mckinnon@twdb.texas.gov

Re: Facilitation of resolution of interregional conflict between the 2026 Initially Prepared
Plans for Regions C and D

Dear Mr. Buhman and Mr. Thompson,

At their June 26, 2025 meeting, the Board found that an interregional conflict exists between the 2026 Region C and Region D Initially Prepared Plans regarding the stated impacts of the proposed Marvin Nichols Reservoir project. In accordance with 31 Texas Administrative Code (TAC) § 357.62, I am requesting that Regions C and D appoint at least one (1) representative, up to a maximum of four (4) representatives, authorized to negotiate on behalf of the planning group in accordance with your bylaws. These representatives must actively and meaningfully engage in facilitation activities, including potential mediation, in an attempt to resolve the conflict. Please submit the names and contact information of your planning group's designated representatives to me by **July 14, 2026** in writing via email to bryan.mcmath@twdb.texas.gov and courtesy copy temple.mckinnon@twdb.texas.gov. My office will designate limited staff to attend and participate in the mediation as a resource.

Our agency has an executed contract with the Center for Public Policy Dispute Resolution (CPPDR) to provide mediation services. A mediator is a neutral party who helps facilitate communication and assists the parties in finding a mutually acceptable resolution to the conflict. The mediator does not decide who is right or wrong and does not issue a judgment. The parties are decision-makers as to how the conflict should be resolved. CPPDR is located at the University of Texas School of Law but will provide up to two days of mediation services virtually.

The mediator will work with you to schedule the mediation. The mediator would also like the opportunity to talk with you before the meeting to get your perspective on the issues. Those conversations would be confidential, as are communications during the mediation itself. We believe this mediation provides an opportunity for your regions to

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Bryan McMath, Executive Administrator

Mr. Buhman and Mr. Thompson
June 26, 2025
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find ways to address this issue and reach solutions you both can embrace. I am hopeful that you will find common ground. I anticipate mediation services to commence no later than **July 31, 2025**.

Please note that we have requested the mediator to inform TWDB, in writing, whether the parties reach agreement. Communication relating to the mediation itself is subject to the confidentiality provisions of the Texas Government Code Section 2009.054. If you cannot reach agreement, 31 TAC § 357.62 stipulates that I determine a proposed recommendation for resolution of the conflict for the Board's consideration and resolution of the conflict.

If you have any questions regarding this matter, please contact Temple McKinnon, Director of Water Supply Planning, at temple.mckinnon@twdb.texas.gov.

Regards,

Bryan McMath Digitally signed by Bryan McMath
Date: 2025.06.26 11:36:54 -0500

Bryan McMath
Executive Administrator



P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

AGENDA ITEM MEMO

BOARD MEETING DATE: June 26, 2025

TO: Board Members

THROUGH: Bryan McMath, Executive Administrator

FROM: Kendal Kowal, Assistant General Counsel

SUBJECT: Potential interregional conflict between initially prepared regional water plans for planning regions C and D

ACTION REQUESTED

Find that an interregional conflict exists between the Region C and Region D 2026 initially prepared regional water plans and authorize steps necessary to address the conflict.

BACKGROUND

The Texas Legislature has long recognized that water is critical to the future of Texas and in 1997 created a state and regional framework for responsibly planning to address both the short- and long-term water needs of the state. Prior to 1997, six state water plans were developed at the state level, beginning with the 1961 state water plan. The proposed Marvin Nichols Reservoir has been included in each state water plan in some form since 1968 and in each Region C regional water plan since 2001.

Planning groups are required to identify potentially feasible projects for their plans, which is a fundamental principle of the regional water planning process. Common metrics must be used to evaluate these projects, including the net quantity, reliability, cost, and impacts on environmental factors and agricultural resources. These planning-level assessments are not as in depth as preliminary engineering, engineering feasibility, or alternative analyses conducted for permitting requirements. Extensive and time-intensive studies to support environmental permitting decisions, including the extent of required mitigation, are conducted during the state and federal permitting processes.

Chapter 16 of the Texas Water Code provides the statutory framework for the regional water planning process; the associated administrative rules are in 31 Texas Administrative Code (TAC) Chapter 357. As provided by Texas Water Code § 16.053(h)(7), "the board may approve a regional water plan only after it has determined that all interregional conflicts involving that regional water planning area have been resolved." Additionally, Texas Water Code § 16.053(h)(6) states that "the board shall facilitate coordination between involved regions" to resolve an interregional conflict.

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Bryan McMath, Executive Administrator

An interregional conflict exists when: A) more than one regional water plan includes the same source of water supply for identified and quantified recommended water management strategies and there is insufficient water available to implement such water management strategies; or B) in the instance of a recommended water management strategy proposed to be supplied from a different regional water planning area, the regional water planning group with the location of the strategy has studied the impacts of the recommended water management strategy on its economic, agricultural, and natural resources, and demonstrates to the board that there is a potential for a substantial adverse effect on the region as a result of those impacts. (31 TAC § 357.10(16)) (emphasis added).

31 TAC § 357.50(d) requires regional water planning groups to submit, in writing, to the Texas Water Development Board (TWDB) Executive Administrator and any other affected regional water planning group the identification of potential interregional conflicts between its initially prepared plan (IPP) and the IPP of another regional water planning group. On April 22, 2025, the TWDB received a letter from the Region D Regional Water Planning Group stating that an interregional conflict exists between its IPP and the IPP of the Region C Regional Water Planning Group (Attachment 1). The Region D planning group stated that the basis of the interregional conflict was that it studied the impacts of the Marvin Nichols Reservoir included as a recommended water management strategy in the Region C IPP and concluded that there is a potential for a substantial adverse effect on Region D, including adverse effect on Region D's economic, agricultural, and natural resources.

The Region C planning group provided a response to the assertion on May 23, 2025, stating that an interregional conflict does not exist because the proposed Marvin Nichols Reservoir will not have a substantial adverse effect on Region D (Attachment 2).

On April 28, 2025, upon request by the TWDB's governing Board, the Executive Administrator requested that the two planning groups submit any relevant information on what constitutes a "substantial adverse effect." In response to this request, the Region D planning group submitted a letter dated May 22, 2025 (Attachment 3), and the Region C planning group submitted a letter dated May 23, 2025 (Attachment 4).

On May 8, 2025, the Board requested that members of the public submit by June 9, 2025 written input regarding the potential for substantial adverse effects or other reasons for the Board to find an interregional conflict exists between Regions C and D regarding the proposed Marvin Nichols Reservoir. The TWDB received over 370 public comments in response. Most of the comments expressed expectations of negative impacts (economic, environmental, cultural, social, or a combination thereof). One comment from a municipality in Region D anticipated significant adverse impacts to the operability of its groundwater-based water supply system. More than half of the comments suggested alternative strategies that Region C should evaluate prior to developing Marvin Nichols, thus bypassing consideration of substantial adverse effects. One commenter recommended having an independent third-party review of the proposed reservoir project. Seven commenters expressed support for development of the reservoir and for keeping the project as a recommended water supply management strategy in the Region C plan.

Regions D and C included detailed discussions of the Marvin Nichols Reservoir in their respective IPPs, as cited in their assertion and respective response letters (Attachments 5 and 6).

31 TAC § 357.62(a) includes a process for resolving a conflict if “the Board has determined that there is a potential for a substantial adverse effect on that region or the Board finds that an interregional conflict exists between IPPs.” 31 TAC § 357.50(e) states that regional water planning groups shall seek to resolve conflicts with other regional water planning groups and shall promptly and actively participate in any TWDB-sponsored efforts to resolve interregional conflicts. If the Board determines that an interregional conflict does exist, the Executive Administrator may request that each group appoint representatives to negotiate on behalf of their regional water planning groups to resolve the conflict.

Interregional Conflicts in Past Regional Water Planning Cycles

The proposed Marvin Nichols Reservoir has been included in each state water plan in some form since 1968 and in each Region C regional water plan since 2001. With the inclusion of Marvin Nichols in the 2011 Region C Regional Water Plan, the Region D planning group asserted an interregional conflict. The TWDB determined that no interregional conflict existed because the rules at that time defined an interregional conflict to only include an overallocation of a water source, which occurs when two or more recommended strategies rely upon a source of water for which there is insufficient water available to implement those strategies. On January 12, 2011, Ward Timber Company, et al., filed a petition in Travis County District Court against the TWDB for failure to find that an interregional conflict existed. The Travis County District Court issued a final judgment in favor of Ward Timber and set aside the Board’s approval of the 2011 Region C Regional Water Plan. The TWDB appealed the decision; subsequently, the Eleventh Court of Appeals affirmed the district court’s opinion and required the Board to find an interregional conflict existed, nullify the adoption of those regional water plans, and pursue a process to facilitate a resolution. (*Tex. Water Dev. Bd. v. Ward Timber, Ltd.*, 411 S.W.3d 544, 573 (Tex. App.--Eastland 2013, no pet.)) (*Ward Timber*).

The facilitated resolution process included an unsuccessful mediation by the State Office of Administrative Hearings, a recommended resolution by the Executive Administrator on which public hearings were conducted, and the submittal of briefs by Regions C and D. The Board issued an Interim Order requiring additional quantitative analysis of resource impacts by Region C. Following submittal of the additional analysis by Region C and responses from Region D and the Executive Administrator, the Board adopted an order on January 8, 2015 finding that the conflict was resolved. The Board approved amendments to the Region C and D regional water plans, which reflected the conflict resolution process and outcomes including references to a conflict, pursuant to that order on March 20, 2015.

In July 2015, the TWDB proposed rules to include a new definition for “interregional conflict” pursuant to the *Ward Timber* decision. In that same month, the Region D planning group asserted that an interregional conflict existed between the Region C and Region D 2016 IPPs, stating that “the proposed Marvin Nichols Reservoir as described in the Region C IPP will have an unacceptable degree of impact on Region D’s water planning area.” On September 9, 2015, the Board found that an interregional conflict existed. On October 5,

2015, Region C and D planning group representatives met in a facilitated mediation at the University of Texas Center for Public Policy Dispute Resolution and agreed on a resolution to the conflict. The new rules defining “interregional conflict” were published for adoption in November 2015.

KEY ISSUES

Planning groups are required to coordinate with neighboring regions throughout the development of their plans. Upon submittal of their draft plans, TWDB rules provide for an interregional conflict process as follows:

- Within 60 days of draft plan submission, a planning group can submit an assertion of a potential interregional conflict to the Executive Administrator.
- The Executive Administrator takes the assertion to the Board to determine whether that interregional conflict exists.
- Should a conflict be found to exist, the Executive Administrator facilitates resolution of that conflict while the affected planning groups seek to resolve the conflict and actively participate in Board-sponsored resolution efforts.
- If the planning groups are unable to resolve the conflict, the Executive Administrator may propose a recommended resolution and hold a public hearing on that recommendation.
- The Executive Administrator will make a recommendation to the Board for resolution of the conflict.
- The Board will consider the Executive Administrator’s recommendation and written statements by a representative of each affected planning group and determine a resolution to the conflict.
- The Executive Administrator will notify planning groups of the decision and direct changes to the affected regional water plans.

Potential for a Substantial Adverse Effect

If a regional water planning group asserts an interregional conflict, the Board is tasked with determining whether the conflict exists and if there is a potential for a substantial adverse effect on that region (31 TAC § 357.62(a)). Section 357.10 states that an interregional conflict exists when, “in the instance of a recommended Water Management Strategy proposed to be supplied from a different Regional Water Planning Area, the regional Water Planning Group with the location of the strategy has studied the impacts of the recommended Water Management Strategy on its *economic, agricultural, and natural resources*, [emphasis added] and demonstrates to the Board that there is a potential for a *substantial adverse effect on the region* [emphasis added] as a result of those impacts” (31 TAC § 357.10(16)).

Plain Language Reading

In determining what constitutes a potential for a substantial adverse effect, one should first look to the plain meaning of each term, as follows. The list below also provides the definitions that the Region C and D planning groups included in their letters (Attachments 3 and 4):

- **Potential:** “Existing in possibility; capable of development into actuality. Expressing possibility.” (Merriam-Webster.com Dictionary)
- **Substantial:**
 - “Consisting of or relating to substance; not imaginary or illusory. Ample to satisfy and nourish. Significantly great. Firmly constructed.” (Merriam-Webster.com Dictionary)
 - Region C: “Large or considerable in quantity, amount, or size but also of real and demonstrable value, not merely nominal.”
 - Region D: “Material or considerable.”
- **Adverse:** “Acting against or in a contrary direction. Opposed to one’s interests; causing harm.” (Merriam-Webster.com Dictionary)
 - Region C: “Negative, detrimental, or against.”
 - Region D: “Unfavorable.”
- **Effect:** “Something that inevitably follows an antecedent (as a cause or agent).” (Merriam-Webster.com Dictionary)
 - Region C: “Impact or result.”
 - Region D: “Result or outcome.”

Therefore, this phrase could be interpreted in its plain reading to mean that the Region D planning group asserts that a considerable, real result detrimental to Region D’s stated economic, agricultural, and natural resources is expected due to the Marvin Nichols Reservoir.

Region C and D Input

In the letter dated May 23, 2025 (Attachment 3), the Region C planning group asserts that “a ‘substantial adverse effect’ exists if the Board determines that 1) there is a net holistic, negative change in the overall economic, agricultural, or natural resources of a region as a whole; and 2) that change is significantly large and demonstrably real based on available data and studies.” The Region C planning group further argues that the potential substantial adverse effect should be viewed in light of Marvin Nichols’ effect on Region D as a whole, not only the reservoir’s footprint or the immediately surrounding area. The Region C planning group argues that the phrase “should be broadly construed to mean a general, overall change on a region as a whole, in both the near and long terms, considering direct and indirect impacts holistically across all sectors.” Further, “it should be a net impact on the region, not just on individual properties, businesses, or industries.” The planning group also argues that the effects on Region C and the state as a whole should be considered if Marvin Nichols is not constructed.

In the letter dated May 22, 2025 (Attachment 4), the Region D planning group asserts that a substantial adverse effect means “a material or considerable unfavorable result or outcome.” The planning group argues that Marvin Nichols would result in a substantial adverse impact to the area in question and the region/state as a whole. The planning group emphasizes that the rule includes the word “potential.” It goes on to emphasize the impacts on the specific area of the proposed reservoir.

Executive Administrator’s Recommendations on “Substantial Adverse Effect”

Avoiding de minimis conflict assertions

In *Ward Timber*, the TWDB raised the concern that the agency could be mired down in many small conflicts if the definition of interregional conflict were expanded further than simply an overallocation of water. The court stated that “the Board can solve its dilemma by amending the rule defining an interregional conflict to include its present definition and the present situation where a region has studied the impacts and finds there is a substantial conflict” (*Tex. Water Dev. Bd. v. Ward Timber, Ltd.*, 411 S.W.3d 544, 573 (Tex. App.--Eastland 2013, no pet.)).

In adopting a new definition for “interregional conflict” in TWDB rules pursuant to *Ward Timber*, the TWDB stated in its preamble that “the board intends by the final rule to allow it to judge some alleged interregional conflicts as so speculative or insubstantial in their impacts on the economic, agricultural, and natural resources that the board will not utilize its limited resources to resolve the de [minimis] conflict” (40 Tex. Reg. 8650 (Nov. 12, 2015)). With the court decision and rulemaking preamble in mind, the Board should consider whether the Region D planning group’s assertion of an interregional conflict is speculative or insubstantial. Additionally, the Board should consider whether facilitating the resolution of the asserted conflict would be a prudent use of state resources.

Given past findings by the court on this similar set of facts, it is the Executive Administrator’s recommendation that the Region D planning group’s current assertion of an interregional conflict is not so speculative and insubstantial as to be considered “de minimis.” Additionally, the Executive Administrator recommends that facilitating the resolution of this potential conflict is a prudent use of state resources.

Lending credence to Region D planning group

The Board should also consider the Region D planning group’s unique position to assess the effects of a reservoir on its own region. Given past findings by the court on this similar set of facts, the Board should lend credence to the Region D planning group’s assertion that there is a potential for substantial adverse effect. The court in *Ward Timber* emphasized in its decision that “the regional water planning groups... are well-suited to identify interregional conflicts based on the common meaning of that term” (*Tex. Water Dev. Bd. v. Ward Timber, Ltd.*, 411 S.W.3d 544, 575 (Tex. App.--Eastland 2013, no pet.)). Furthermore, the TWDB stated in its 2015 adoption preamble for the new definition of interregional conflict that “the board does not intend to engage in extensive fact finding on the impacts of the disputed water management strategy,” thereby implying the intent to defer, to a degree, to regional water planning groups on the topic (40 Tex. Reg. 8651 (Nov. 12, 2015)). The Board should consider this point made by the court and the TWDB in analyzing this potential interregional conflict.

The facts presented in the *Ward Timber* case are virtually identical to the facts presented here (as described above). In *Ward Timber*, the court determined that “the Region D planning group in its Region D plan made a preliminary case that there is a substantial interregional conflict with Region C’s plan, and that should be sufficient for the Board to require the two regional planning groups to attempt to resolve that conflict” (*Tex. Water Dev. Bd. v. Ward Timber, Ltd.*, 411 S.W.3d 544, 575 (Tex. App.--Eastland 2013, no pet.)). If a

court found that the Region D planning group made a preliminary case for the determination of an interregional conflict in a situation with virtually identical facts, it is safe to assume that a court would make the same determination based on that precedent in this case. Therefore, in this instance, the Board should consider the precedent set by the court in *Ward Timber*.

The Executive Administrator recommends that the Board consider the current, similar facts at hand to those in the *Ward Timber* case and come to the same conclusion as the court in that case. This is not to say that the Region C planning group's assertions regarding this potential interregional conflict should not be considered and weighed; it should be noted that the Region C planning group was not a party to *Ward Timber*. The Executive Administrator recommends that following the guidance of the court in *Ward Timber* gives both regions the opportunity for open dialogue between planning group representatives through facilitated mediation for resolution.

Remaining Questions and Issues for the Board's Consideration

Even with statutes, rules, and caselaw, the Board does not have strict and unwavering instructions on how to determine when an interregional conflict exists. Additionally, differing parties have varying opinions on the facts at hand and how these legal sources should be interpreted.

The following topics and issues remain for the Board members to consider:

- A precise estimated quantification of the impacts of the proposed Marvin Nichols Reservoir will never be fully known without the state and federal regulatory permitting processes commencing for this specific project. The real and true impacts of a reservoir are never truly known until the reservoir is actually constructed.
- The applicable statutes and rules do not specify the level of detail and scale to consider in looking at "substantial adverse effects." The rule does reference the effects "on that region," meaning the entire regional water planning area asserting the interregional conflict (31 TAC § 357.62(a)). The rule does not specify direct vs. indirect, positive vs. negative, weighing impacts on any other potentially effected region, etc.
- Administrative rules in place for this planning cycle include deliberate interregional coordination activities (31 § TAC 357.21(a)(1) and (c)(8)) based upon recommendations from the Interregional Planning Council, of which Regions C and D are members. While coordination events occurred between the two planning groups leading up to submission of the IPPs, no direct dialogue occurred between planning group members to work towards a solution prior to the Region D assertion. As such, the Executive Administrator recommends that direct dialogue between planning group representatives through facilitated mediation holds potential for a successful path forward.

Conclusion

The Executive Administrator recommends finding that an interregional conflict exists between the Region C and Region D 2026 initially prepared regional water plans because the Region D planning group has asserted that a considerable, real result detrimental to Region D's stated economic, agricultural, and natural resources is likely; therefore, the potential for a substantial adverse effect has been shown. The Executive Administrator recommends that the Region D planning group's current assertion of an interregional conflict is not so speculative and insubstantial as to be considered "de minimis" and that facilitating the resolution of this potential conflict is a prudent use of state resources. The Executive Administrator recommends that this situation could benefit greatly from an opportunity for facilitated mediation between Region C and Region D planning group representatives.

RECOMMENDATION

Find that an interregional conflict exists between the Region C and Region D 2026 initially prepared regional water plans for the reasons discussed above and encourage discussion in the form of facilitated mediation between designated region representatives to address stated concerns and authorize steps necessary to resolve the conflict.

LEGAL/SPECIAL CONDITIONS

1. Require the Region C and Region D planning groups to appoint, by July 14, 2025, up to four representatives per region authorized to negotiate on their behalf in a facilitated mediation to occur by July 31, 2025.
2. Require the Executive Administrator to appoint up to two representatives to be available as resources in the facilitated mediation.
3. Limit participation in that facilitated mediation process to the representatives identified in items 1 and 2 and the chosen mediation staff.
4. The Executive Administrator will report back to the Board at a regularly scheduled Board meeting.

Attachment(s):

1. Region D assertion of an interregional conflict
2. Region C response letter asserting no interregional conflict
3. Region D letter on meaning of substantial adverse effects
4. Region C letter on meaning of substantial adverse effects
5. Excerpts from Region D IPP
6. Excerpts from Region C IPP