

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Jessica Zuba, Deputy Executive Administrator, Water Supply & Infrastructure

FROM: Matt Nelson, Assistant Deputy Executive Administrator, Water Supply & Infrastructure

DATE: October 5, 2017

SUBJECT: Briefing and discussion of input received in response to the TWDB request for preliminary input sent to stakeholders on August 28, 2017.

ACTION REQUESTED

This is an information item for discussion presenting background on a preliminary input request sent to regional water planning groups (planning groups) and an overview of comments received. No action is required.

BACKGROUND

In advance of revisions to 31 Texas Administrative Code (TAC) Chapter 357 to address legislation from the 85th (R) Legislative Session, the Texas Water Development Board (TWDB) solicited preliminary input from regional water planning stakeholders. This request for input was accompanied by a matrix of potential requirements for simplified planning, as a starting point for discussion (Attachment 1). A summary of stakeholder comments received in response to the request for input are included as Attachment 2.

KEY ISSUES

Comments received primarily address the provisions in Senate Bill 1511 regarding simplified planning and amending regional water plans for infeasible strategies or projects.

Following work session discussion and consideration of preliminary input, a draft proposal of revisions to 31 TAC Chapter 357 will be developed and brought to the Board for consideration to post for public comment.

<p style="text-align: center;">Our Mission</p> <p>To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p style="text-align: center;">Board Members</p> <p>Bech Bruun, Chairman Kathleen Jackson, Board Member Peter Lake, Board Member</p> <p>Jeff Walker, Executive Administrator</p>
---	---	--

RECOMMENDATION

This item is for discussion only. No action is required.

Attachment 1: August 28, 2017 TWDB request for preliminary input on revisions to TWDB regional water planning rules.

Attachment 2: Summary of comments received in response to request for preliminary input.

Texas Water Development Board

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

August 28, 2017

Re: Preliminary input on revisions to TWDB regional water planning rules

Dear Stakeholder:

Texas Water Development Board (TWDB) is preparing to propose revisions to 31 Texas Administrative Code (TAC) Chapter 357 to address statutory changes from Senate Bills 347 and 1511 and House Bill 2215, 85th(R) Legislative Session. The scope of the potential rule revisions will not necessarily be limited to these topics.

Senate Bill 1511, 85th Legislative Session, relating to the state and regional water planning process, includes among other requirements, a provision for simplified planning by the regional water planning groups; a requirement that certain meetings of regional water planning groups be held at central locations readily accessible to the public; and that regional water planning groups shall amend their adopted plans to exclude strategies or projects that cease to be feasible. We are seeking feedback on these specific provisions as well as other requirements in these pieces of legislation.

Before determining the scope and specific content of the draft rulemaking, we would like your input. Attachment A represents a potential framework for simplified planning as a starting point for input. Please provide comments related to the summarized rule revision topics or any other potential revisions associated with 31 TAC Chapter 357.

Please provide your comments and any additional suggested revisions to RulesComments@twdb.texas.gov by October 2, 2017. Please put the words "2017 Planning Rulemaking" in the subject line. If you have any questions about the revisions or the rulemaking process, you may contact Temple McKinnon at (512) 475-2057 or temple.mckinnon@twdb.texas.gov.

Sincerely,



Jessica Zuba
Deputy Executive Administrator
Water Supply & Infrastructure

TM/ms

Attachment: Potential minimum requirements for simplified regional water plans

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas	Our Mission : : : : : : : : :	Board Members Bech Bruun, Chairman Kathleen Jackson, Member Peter Lake, Member Jeff Walker, Executive Administrator
---	---	---

Potential requirements for simplified regional water planning option (assumes pursuit of simplified plan)

Regional water planning group activity or deliverable	Basis for requirement				Background
	Specifically required in SB1511	Stakeholder transparency considerations	Required for regional/state water plan adoption	Required for state water plan consistency	
Board adopted population and demand projections.	x			x	Required by SB1511.
Updated water availability and existing supplies.	x			x	Required by SB1511.
*Public meeting on process for identifying potentially feasible water management strategies (WMS).		x			Meeting may depend on whether the regional water planning group (RWPG) chooses to pursue simplified planning approach.
Technical memorandum with accompanying RWPG simplified planning decision in accordance with SB 1511/Board guidance on "no significant changes" threshold and some discussion regarding how previously recommended WMSs would be impacted, if at all.		x			Tech memo is currently contractually required and could potentially be expanded on to serve as a logical decision point/vehicle for notifying TWDB of intent to pursue simplified planning. May include decision support information and summary of public comments received regarding decision to pursue simplified planning.
**Public hearing on technical memorandum including potential request for simplified planning.		x			Public hearing to allow for public input prior to a decision to pursue simplified planning, a significant decision for an RWPG because it is effectively the decision to retain the previous water plan strategy recommendations.
If necessary, make limited adjustment to WMS volumes in accordance with updated water availability determinations (e.g. MAGs).		x	x	x	Necessary to address potentially overallocated water sources that could also cause interregional conflicts which must be resolved before regional water plan approvals.
Simplified update to project costs using ENR September 2018 index and revised interest rates during construction, annual interest rates, and power costs.			x	x	Necessary to ensure that state water plan costs and assumptions are uniform across the state.
Strategy implementation survey and impediment determination.		x	x	x	Revised and new statutory requirement for SWP (16.051(a-1)(3)) and TWDB may obtain data from RWPGs per 16.051(a-2).
Comparison to the previous regional water plan.		x			Explanation of basis for simplified approach and that there are no changes.
Address new legislative requirements from the Texas Legislature or planning requirements.	x	x	x	x	Required by SB1511.
Develop initially prepared plan document (simplified basis) and conduct associated public hearing.	x	x	x		This is the significant public input milestone for plan development, the point at which all 16 RWPGs have draft plans available for comparison, and the point at which interregional conflicts are identified by the Board.
Interregional conflict resolution, as necessary.	x	x	x	x	If a conflict is identified, it must be resolved prior to the Board considering approval of the final plans relevant to the identified conflict.
Assess water infrastructure funding needs.		x	x	x	The state water plan is statutorily required to provide this information and relies on information from the regional water plans.
Documentation of plan adoption and public input process.		x	x		To document that statutorily required public processes were followed and the reason that the RWPG selected the simplified approach.

Regional water planning group activity or deliverable	Basis for requirement				Background
	Specifically required in SB1511	Stakeholder transparency considerations	Required for regional/state water plan adoption	Required for state water plan consistency	
Adopt and submit final regional water plan document for Board approval.	x	x	x	x	Required by SB1511.
***Project prioritizations either ratified or updated in accordance with HB4 Committee's Uniform Standards in effect.		x	x		Required for Board prioritization of SWIFT applications.

**As of August 14, 2017, none of the 16 planning groups have held this meeting for the 2021 plans.*

***Key decision point for pursuing simplified planning.*

****Submitted separately from the regional water plans.*

Summary of concerns/recommendations received from stakeholders¹
(received in response to TWDB 8/28/17 request for preliminary input on rule revisions)

House Bill 2215

- 1) TWDB should include a specific timeline in the rule related to Modelled Available Groundwater development and recommend for new MAGs to be considered in a plan, that they should be completed at least six months prior to the Technical Memorandum due date.

Senate Bill 347

- 2) TWDB should include a provision that attendance of less than a quorum of members at a properly noticed public meeting of an RWPG sub-unit (committee/subcommittee) does not preclude the members present from receiving or discussing information regarding the plan nor does it preclude them from making recommendations to the RWPG. Any action by the RWPG sub-unit which would be binding on the RWPG or the regional water plan would be expected to follow normal quorum requirements.
- 3) TWDB should include a provision allowing RWPG sub-unit members to designate other individuals to act as alternates if they are unable to attend a meeting of the RWPG sub-unit.
- 4) TWDB should include a provision that special public notice and content requirements (greater than 72-hr notice, defined comment periods, etc.) for certain topics do not apply to RWPG sub-unit meetings.

Senate Bill 1511 – Amending Plans for Infeasible WMS

Timing of Determination of Infeasible WMS

- 5) TWDB should establish a cutoff point (either a specific date or some other time-based criterion associated with other RWPG activities) beyond which any changes in feasibility brought to the attention of the RWPG would not trigger an amendment of the prior regional water plan but would be dealt with solely in the ongoing development of the next regional water plan, unless the amendment is determined necessary by the RWPG.
- 6) TWDB should provide guidance that identifies specific criteria that renders a project “infeasible”, process of how such a determination is made, schedule and timeline for action, and other directives to provide clarity on the new requirement.
- 7) TWDB should commence implementation of amending infeasible WMS or projects with the adoption of the 2021 Regional Water Plans. Implementing for the 2016

¹ Prepared for facilitating discussion only. Not a comprehensive list of all comments or language received. May include multiple, similar comments made by separate stakeholders.

Regional Water Plans would place an undue burden on the RWPGs this far into the 5th planning cycle.

- 8) TWDB should require that RWPGs conduct a review of which WMS or projects from the previous plan may have become infeasible prior to initiating the identification and evaluation of WMS or projects for the current planning cycle.

Process of Determination of Infeasible WMS

- 9) TWDB should narrowly define the process for regional water plan amendments of infeasible projects to avoid unnecessary, duplicative, or costly effort which could overburden the RWPG and hinder ongoing plan development.
- 10) TWDB should clearly establish in the proposed rules the mechanism(s) for collecting data to identify infeasible WMS or projects in the prior plan. Options:
 - a. Limit to cases where infeasibility is presented to the RWPG by the sponsor or identified by the RWPG or its technical consultants from local knowledge.
 - b. Data collection through WUG surveys during the first half of the planning cycle, although response rates across RWPGs vary considerably.
 - c. Data collection through the infrastructure financing survey, although this survey occurs late in the planning cycle.
 - d. Data collection through a WMS- or project-specific survey, although an additional survey could negatively impact response rates for other more crucial surveys.
- 11) RWPGs should retain the ability to make the determination of project schedules that are “consistent with the completion of implementation” based upon the needs of particular regions and understanding of specific projects. Time frames for similar projects may vary significantly depending on individual circumstances. Rules could identify the types of factors that RWPGs could consider for this determination, but not specify default assumptions.
- 12) TWDB should update guidance requirements to include a provision to require regional water plans to summarize key project components (i.e., results of impact categories for evaluated WMS) for infeasible projects in an Appendix, including a discussion on why the project is considered infeasible, so that the information is retained and accessible in the planning documents.

Funding the Determination of Infeasible WMS

- 13) TWDB should make funding available to RWPGs to amend infeasible projects out of the regional water plan. Eligible activities for reimbursement should include efforts associated with identification and evaluation of new water management strategies (WMS); required public notice costs; participation in public meetings; coordination with affected water user groups (WUGs) and wholesale water providers (WWPs); updating prioritization of projects; and other work specifically needed to fulfill SB1511 provisions related to removal of infeasible projects and substitution of feasible strategies to address the same need.

- 14) Since the plan revision process could involve many entities, necessitating evaluating multiple potentially overlapping analyses and associated entities may be unwilling or unable to fund such amendments, TWDB should structure and fund amendments for infeasible WMS or projects as a distinct task in the regional water plan development scope of work.

Senate Bill 1511 – Simplified Planning

Simplified Planning Determination Analysis

- 15) TWDB should interpret the language “based on its own initial analysis” to mean performance of relevant (contracted) planning tasks or parts of task rather than a peripheral activity outside of the contract scope of work.
- 16) Certain components of the planning process, particularly those associated with assessing the feasibility of simplified planning, cannot readily be simplified and should retain the normal scope and funding associated with a full planning process. Examples:
- a. Evaluation of population and demands (Task 2) should not be simplified because this information is required before the simplified planning assessment can be initiated.
 - b. Evaluation of availability and supplies (Task 3) efforts will remain at or near the level required for the full planning process due to changes to TCEQ models, granting of new water rights, changes to regulatory groundwater availability, or changes in reuse. If only a comparison of supplies by source is required by rule and the changes are small, then perhaps the allocation of supplies may not need to be updated which would be a major factor in simplifying the effort required to complete the plan. If updated supply allocations are required, there is no reduction in effort.
 - c. Evaluation of needs and technical memorandum development (Task 4) would be crucial to determining the viability of simplified planning and could not easily be scaled back.
 - d. Evaluation of additional tasks (Tasks 9-12, infrastructure financing survey, public participation, implementation, prioritization) would be challenging to simplify or perform under reduced funding.
 - e. There is little or no reduction in effort for the primary basis of regional water planning. The RWPG will also need to update WMSs, which is often a large portion of plan development, but the amount of effort and budget needed under simplified planning is uncertain.
 - f. Tasks that would involve minimal changes include Tasks 1 and Tasks 6-8 (regional description, impacts, drought response, and policy recommendations), which have historically represented a small portion of the effort for plan development (~10%).

- 17) TWDB should clearly define thresholds for significant changes to availability, supply, or needs. It is recommended these thresholds be in the form of a percentage rather than a set volume.
- 18) TWDB should require any region considering simplified planning to coordinate on the request with any region with which it shares existing supplies or future WMS or if sharing of WMS is anticipated.
- 19) RWPGs that choose to pursue simplified planning should submit results of updated groundwater and surface water availability to TWDB for review, approval, and public comment. The RWPG should demonstrate that the simplified plan will not diminish the overall value of the plan for that planning cycle.
- 20) RWPGs that choose to pursue simplified planning should provide public notice for comment. The notice should state what the simplified plan will and will not include and be made available on RWPG's and TWDB's website.

Timing of Simplified Planning Determination

- 21) RWPGs should request simplified planning after completion of Tasks 2-4 (Technical Memorandum) rather than at the beginning of the planning cycle.
- 22) TWDB rules should provide a mechanism to handle situations where an RWPG has requested simplified planning and later discovers conditions require full plan development.

Content of Simplified Plans

- 23) Simplified planning could be beneficial under certain circumstances provided the final deliverable is also simplified and there is sufficient funding to adequately address TWDB requirements.
- 24) TWDB should clearly define the simplified planning deliverable. Options offered:
 - a. Treat simplified planning deliverables as an addendum to the prior plan rather than as a full regional water plan.
 - b. Deliverables could consist primarily of technical memoranda, including the Task 4 Technical Memorandum, memoranda on WMS implementation, funding, interregional coordination, public participation, etc. as well as data reports from DB22. These memoranda and reports could be compiled with an executive summary into a highly condensed initially prepared plan.
 - c. Planning tasks with minimal differences from the prior plan due to simplified planning could be incorporated by reference to the prior plan. These could include Tasks 6 (Impacts and Consistency), 7 (Drought Response), and possibly 5B (Conservation Recommendations).
- 25) Simplified planning could result in different requirements and deliverables for various regions, making plan comparisons challenging. TWDB proposed rules should provide guidance on this topic and continue to promote the database as the coordination tool for RWPGs.

- 26) RWPG members should acknowledge that certain portions of the regional water plan will be carried forward without further review, if that is the proposal approach for the simplified plan.
- 27) The simplified plan should identify and explain which chapters were “carried over” rather than updated.
- 28) TWDB should standardize the location of hydrologic assumptions in each plan document (same section, chapter, or appendix) to increase the ease of comparing RWPs.

TWDB Assistance in Simplified Planning

- 29) For RWPGs with minimal or no changes to WMS, it may be beneficial to add cost scaling capability to DB22 to automatically scale project costs based on the appropriate cost indices for projects or WMS that are unchanged.
- 30) It might be advantageous for DB22 to facilitate distribution of the infrastructure financing surveys directly from TWDB for RWPGs engaged in simplified planning.
- 31) TWDB should reassess its formula funding approach to the primary planning tasks (Tasks 2-4), whose efforts have historically exceeded initial budgets for many regions but are tasks that are necessary to complete to determine if simplified planning should be pursued.

<i>General Comments</i>

- 32) TWDB should increase the flexibility for WUG population and demand projections to match local WUG planned projections. This would reduce artificially high or low water demand projections that differ from local water management plans.
- 33) TWDB should increase the flexibility in project costing to reduce discrepancies between planning costs and real project costs.
- 34) TWDB should assure that RWPG members and the public are provided access to online versions of the initially prepared plan and have adequate time to review in advance of deadlines for comments or decisions by the RWPGs.