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Policy recommendations

Chapter 2 ♦ Water for Texas
2017 State Water Plan
Texas Water Development Board

The state water plan, as formally adopted by the Board, serves as a guide to state water policy and includes legislative recommendations on various issues related to water planning and implementation.

By statute, the Board must consider making recommendations that it believes are needed and desirable to facilitate voluntary water transfers and to identify river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs. Previous state water plans also have recommendations regarding such issues as financing the state water plan, requiring retail utilities to conduct water loss audits, and encouraging water conservation.

The TWDB based the recommendations for this plan largely on recommendations contained in the 2016 regional water plans.

Regional water planning groups made a number of regulatory, administrative, and legislative recommendations³ in the adopted regional water plans to

- facilitate the orderly development, management, and conservation of water resources;
- facilitate preparation for and response to drought conditions so 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 state and regional water planning areas.

Along with general policy and statutory recommendations, planning groups also made recommendations in the 2016 regional plans for designating river and stream segments of unique ecological value and unique sites for reservoir construction;

³ Available at www.twdb.texas.gov/waterplanning/rwp/plans/2016

however, the Texas Legislature is responsible for making the official designations of these sites.

Planning groups may recommend the designation of all or parts of river and stream segments of unique ecological value located within their planning areas. These recommendations are based upon several criteria:

- biological function
- hydrologic function
- riparian conservation areas
- high water quality
- exceptional aquatic life
- high aesthetic value
- threatened or endangered species/unique communities

The recommendations include physical descriptions of the stream segments, maps, and other supporting documentation. The planning groups coordinate each recommendation with the Texas Parks and Wildlife Department and include, when available, the Texas Parks and Wildlife Department's evaluation of the river or stream segment in their final plans.

A planning group may also recommend a site as unique for reservoir construction based upon several criteria:

- 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
- location; hydrology; geology; topography; water availability; water quality; environmental, cultural, and current development characteristics; or other pertinent factors make the site uniquely suited for: (a) reservoir development to provide water supply for the current planning period; or (b) to meet needs beyond the 50-year planning period

Based on planning groups' recommendations and other policy considerations, the TWDB makes the following recommendations:

Issue 1: Unique stream segment designation

The legislature should designate the five river or stream segments of unique ecological value recommended by the 2016 regional water plans (Alamito Creek, Black Cypress Bayou, Black Cypress Creek, Pecan Bayou, and Terlingua Creek) for protection under Texas Water Code §16.051(f).

By statute, this designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment that the legislature has designated as having unique ecological value (§16.051(f)). It is up to the legislature to make such designations.

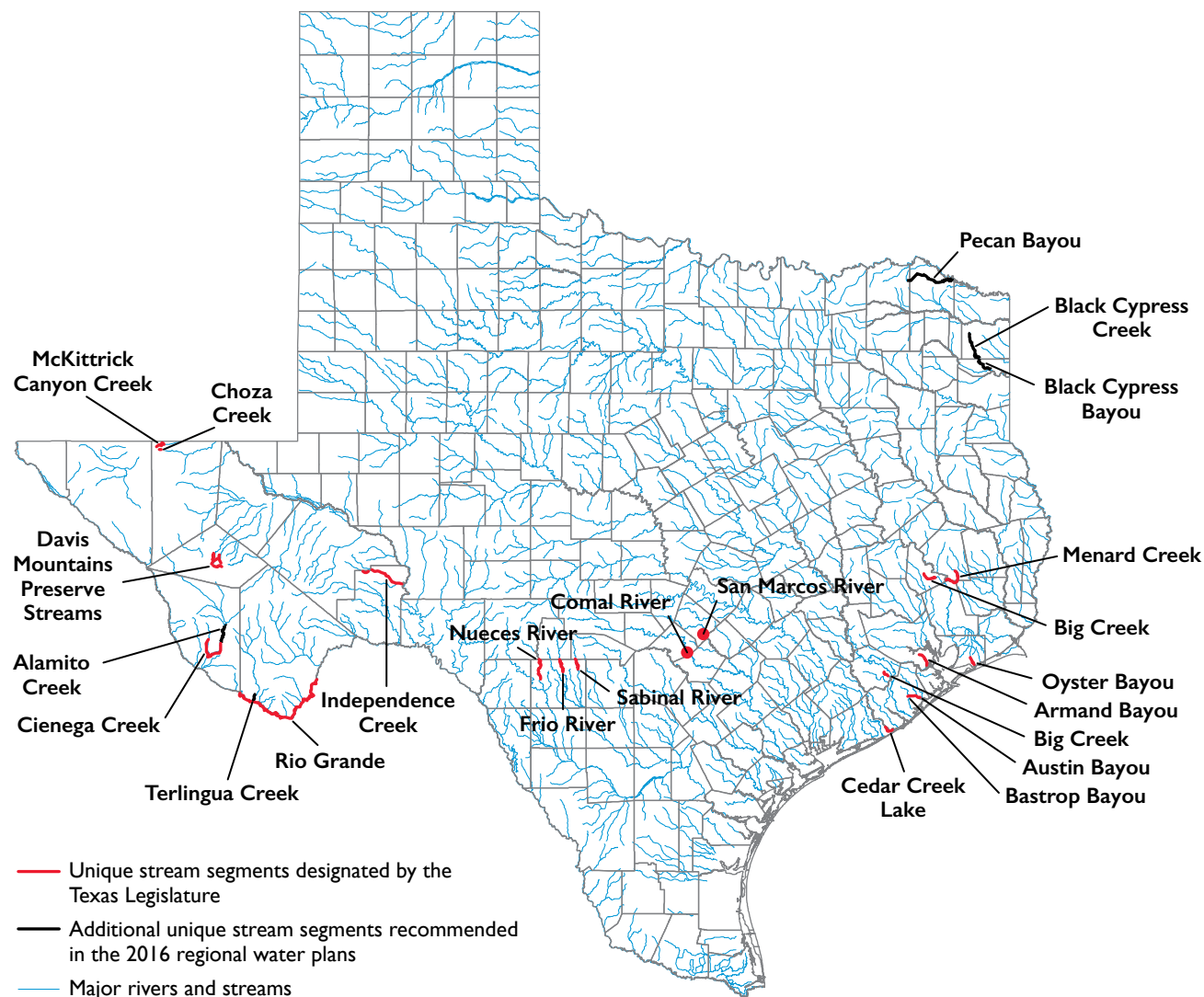
The recommendation is for the following five stream segments:

Summary of the recommendation

Pursuant to Texas Water Code §16.051(e) and §16.053(e)(6), state and regional water plans shall identify river and stream segments of unique ecological value that they recommend for protection.

- **Alamito Creek** in Presidio County solely within the boundary of the 1,061-acre Trans Pecos Water Trust —approximately a 3.5-mile stream segment.

Figure 2.1 - Unique stream segments previously designated by the Texas Legislature and additional recommended segments





Twin Falls on Barton Creek, Austin, Texas

- **Black Cypress Bayou** in Marion and Cass counties from the confluence with Big Cypress Bayou in south central Marion County upstream to the confluence of Black Cypress Creek east of Avinger in south Cass County.
- **Black Cypress Creek** in Cass and Morris counties from the confluence with Black Cypress Bayou east of Avinger in southern Cass County upstream to its headwaters located 4 miles northeast of Daingerfield in the eastern part of Morris County.
- **Pecan Bayou** in Red River County from 2 miles south of Woodland in northwestern Red River County east to the Red River; approximately 1 mile west of the eastern Bowie County line.
- **Terlingua Creek** in Brewster County solely within the boundary of Big Bend National Park—approximately a 5-mile stream segment. The reach of Terlingua Creek recommended as an ecologically unique stream segment is only that portion of the creek located within Big Bend National Park. This proposed unique

segment is approximately 5 miles in length. Terlingua Creek transects Big Bend National Park from the confluence with the Rio Grande to the Big Bend National Park boundary located about 5 miles north of the river.

Senate Bill 3, passed by the 80th Texas Legislature, designated 19 stream segments recommended in the 2007 State Water Plan, and the 84th Texas Legislature designated an additional five segments from the 2012 State Water Plan with passage of House Bill 1016. Some of these designated stream segments included multiple, separate reaches of the same stream (Figure 2.1).

Issue 2: Unique reservoir site designation

The legislature should designate for protection under Texas Water Code §16.051(g) three sites of unique value for the construction of reservoirs as recommended in the 2016 regional water plans: Coryell County Off-Channel Reservoir, Millers Creek Off-Channel Reservoir, and Parkhouse II (North).

Summary of the recommendation

Pursuant to Texas Water Code §16.051(e) and §16.053(e)(6), the state and regional water plans shall identify sites of unique value for reservoir construction. This authority also relates to the state's general interest in reservoir development as codified in the Texas Constitution:

“It is hereby declared to be the policy of the State of Texas to encourage the optimum development of the limited number of feasible sites available for the construction or enlargement of dams and reservoirs for conservation of the public waters of the state, which waters are held in trust for the use and benefit of the public, and to encourage the optimum regional development of systems built for the filtration, treatment, and transmission of water and wastewater.” - Article 3, Section 49-d(a)

Texas Water Code §16.051(g) gives the legislature authority to designate a site of unique value for the construction of a reservoir. By statute, once a reservoir site is designated for protection, a state agency or political subdivision of the state may not obtain a fee title or an easement that would significantly prevent the construction of a reservoir. Without such designation, actions by state or local government entities could compromise the viability of these sites for future reservoir development.

Not all regions of Texas have access to the same types of water resources or in similar proportion. For many water users, development of reservoirs is an important means for providing large volumes of renewable, affordable water supply. As evidenced in the 2016 regional water plans and this state water plan, surface water resources, including the development of additional major reservoirs, will continue to play an essential role in Texas' water plans throughout and beyond the current planning horizon.

Approximately 45 percent of all recommended water management strategy supplies in this plan are associated with surface water, the majority of which is associated with existing and future reservoirs. Meeting a significant share of Texas' future

water needs through the development of the most promising reservoir sites requires a stable, long-term commitment.

Designation of sites of unique value for the construction of reservoirs by the Texas Legislature provides an important measure of protection for these sites for future development. While designation of unique sites by the Texas Legislature does prevent some actions that could threaten the development of a reservoir, it does not guarantee protection of the sites, for example, against federal actions.

Prior to the 80th Texas Legislature, three unique reservoir sites had been previously designated by the legislature; the 76th Texas Legislature designated Allens Creek Reservoir with the passage of Senate Bill 1593, the 77th Texas Legislature designated Post Reservoir in 2001 with House Bill 3096, and the 78th Texas Legislature designated Lake Columbia in 2003 with the passage of Senate Bill 1362 (Figure 2.2).

With the passage of Senate Bill 3 in 2007, the 80th Texas Legislature designated an additional 19 reservoir sites (Figure 2.2) with a provision whereby the designations would expire on September 1, 2015, “unless there is an affirmative vote by a proposed project sponsor to make expenditures necessary in order to construct or file applications for permits required in connection with the construction of the reservoir under federal or state law” (Texas Water Code §16.051(g-1)). With the passage of House Bill 1042 in 2015, the 84th Texas Legislature redesignated the Lake Ringgold reservoir site as unique.

The legislature should designate for protection the three reservoir sites of Coryell County Off-Channel Reservoir, Millers Creek Off-Channel Reservoir, and Parkhouse II (North) (Figure 2.3). These three reservoir sites were recommended for designation in the 2016 regional water plans and have never been previously designated by the Texas Legislature as having unique value for the construction of reservoirs.

Issue 3: Timing of the adoption of desired future conditions with respect to the state and regional water planning cycles

The legislature should require that the next set of desired future conditions be *adopted* collectively by the district representatives of each groundwater management area by January 5, 2022, and every five years thereafter and require that the regional water plans under development as of that same date be consistent with those adopted desired future conditions in effect on that date.

Summary of the recommendation

Estimates of annual groundwater availability that are based on desired future conditions are one of the fundamental constraints in the development of regional water plans. However, under Texas Water Code §16.053(e)(2-a), the specific desired future conditions on which each regional water planning cycle is based are currently governed by a combination of an indeterminate state water plan adoption date and an indeterminate desired future conditions adoption date. This creates uncertainty for both representatives of groundwater management areas and planning group members in the form of “moving target” dates. The interrelated

Figure 2.2 - Unique reservoir sites previously designated by the Texas Legislature

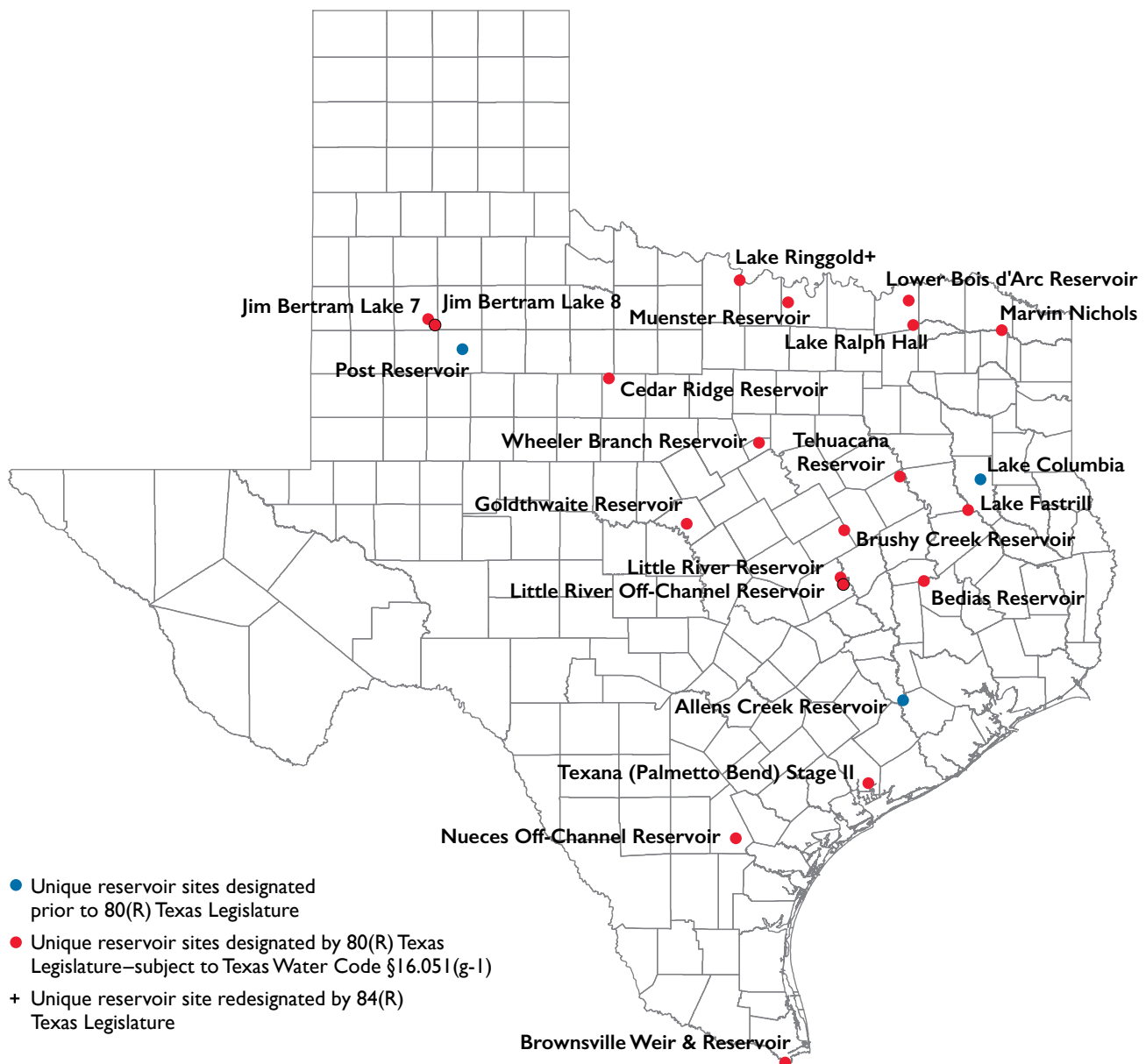
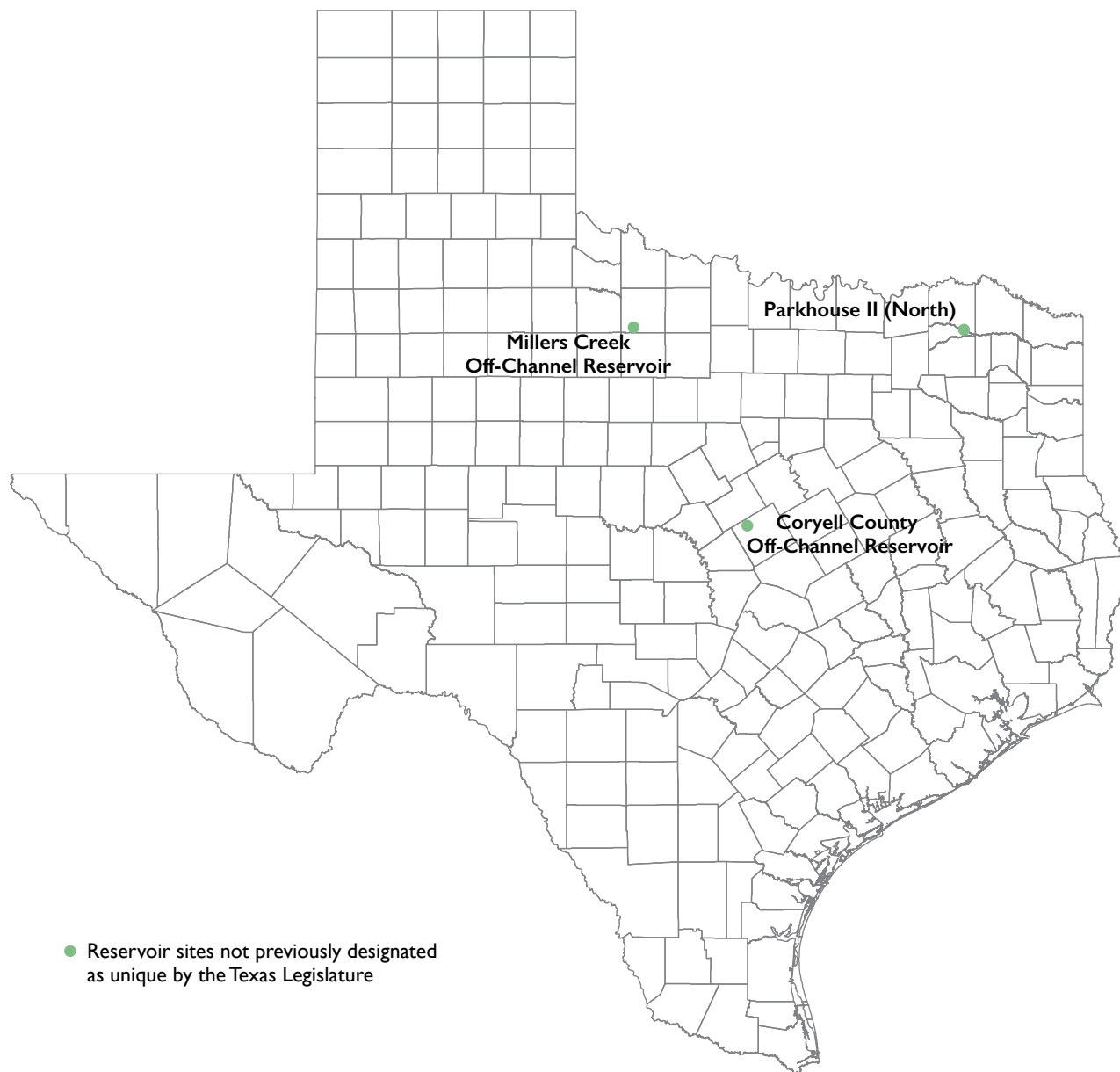


Figure 2.3 - Reservoir sites recommended for designation as unique



processes and requirements causing this situation are as follows:

- Notwithstanding the one-time, one-year extension for the current round of joint planning in groundwater management areas, the current statutory deadline for district representatives in groundwater management areas *proposing* desired future conditions is September 1, 2010, and every five years thereafter.
- Once desired future conditions are *proposed*, however, the date of actual *adoption* of desired

future conditions is not date-certain. Once desired future conditions are *proposed*, it is estimated that it could require up to an additional three to nine months for their *adoption*, but that time frame is not set forth in statute. The TWDB cannot produce and deliver the resulting modeled available groundwater numbers for use by groundwater districts and planning groups until it receives the adopted desired future conditions. The estimated time required for the TWDB to develop and deliver modeled available groundwater numbers ranges from approximately six months to

one year following receipt of adopted desired future conditions.

- Statute requires that regional water plans must be consistent with the *adopted* desired future conditions as of the date the Board most recently adopted a state water plan. While the statutory deadline for adoption of the state water plan is January 5, 2002, and every five years thereafter, the specific date that the Board actually adopts each state water plan prior to that deadline is not date-certain.

Replacing the statutory deadline for *proposed* desired future conditions under Texas Water Code §36.108 with a deadline for *adoption* of desired future conditions and tying that adoption deadline to the existing statutory deadline for adoption of the state water plan will increase stakeholder certainty and better synchronize the five-year joint groundwater and regional water

planning cycles. This recommendation will also provide agency staff with sufficient time to develop and deliver modeled available groundwater numbers in a timely manner for use by planning groups.

With regard to the next joint groundwater planning and 2022–2026 regional water planning cycles, the recommendation would result in an anticipated schedule as follows:

- January 5, 2022 – deadline for adopted desired future conditions
- January 5, 2022 – deadline for adoption of the 2022 State Water Plan
- January 2023 – TWDB develops and delivers modeled available groundwater numbers
- 2022–2026 regional water plans must be consistent with the desired future conditions in effect as of January 5, 2022



Benbrook Lake, a reservoir on the Clear Fork of the Trinity River in Tarrant County