

Texas Water Development Board

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TO: Board Members

THROUGH: Kevin Patteson, Executive Administrator
Les Trobman, General Counsel
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Water Science & Conservation
Jeff Walker, Deputy Executive Administrator
Water Supply & Infrastructure

FROM: Matt Nelson, Director, Water Uses, Projections, & Planning

DATE: December 28, 2015

SUBJECT: Briefing, discussion, and possible action on potential legislative and policy recommendations to include in the Draft 2017 State Water Plan

ACTION REQUESTED

Staff seeks guidance on legislative and policy recommendations to be considered for inclusion in the Draft 2017 State Water Plan.

BACKGROUND

In addition to incorporating and synthesizing information from the regional water plans, the State Water Plan, as formally adopted by the Board, serves as a guide to state water policy (Texas Water Code (TWC) §16.051(b)). This includes making legislative recommendations that the Board believes are needed and desirable to facilitate voluntary water transfers and identifying river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs (TWC §16.051(e)). The Board's policy recommendations will become part of the final adopted 2017 State Water Plan that will be submitted to the governor, lieutenant governor, speaker of the Texas House of Representatives, and the House and Senate Natural Resources Committees prior to the statutory deadline of January 5, 2017.

Final policy recommendations included in the state water plan are those of the Board. However, since 1997, Board policy recommendations have utilized information included in the regional water plans, stakeholder input, and Executive Administrator (EA) recommendations. During each planning cycle, the regional water planning groups include regulatory, administrative, and legislative recommendations in the regional water plans, including recommendations for unique stream segments and reservoir sites, in accordance with TWC §16.053. Additionally, the Board may solicit stakeholder input on its Draft 2017 State Water Plan policy recommendations during the public comment period prior to adoption of the 2017 State Water Plan.

Our Mission

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

Board Members

Bech Bruun, Chairman | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator

The following draft policy items were developed by the EA and are provided below for your consideration:

- Issue 1: Unique stream segment designation
- Issue 2: Unique reservoir site designation
- Issue 3: Timing of adoption of desired future conditions with respect to the state and regional water planning cycles

KEY ISSUES

Issue 1: Unique stream segment designation

EA Recommendation: The legislature should designate the five river or stream segments of unique ecological value recommended by the regional planning groups for protection under Texas Water Code §16.051(f).

Pursuant to TWC §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. 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.

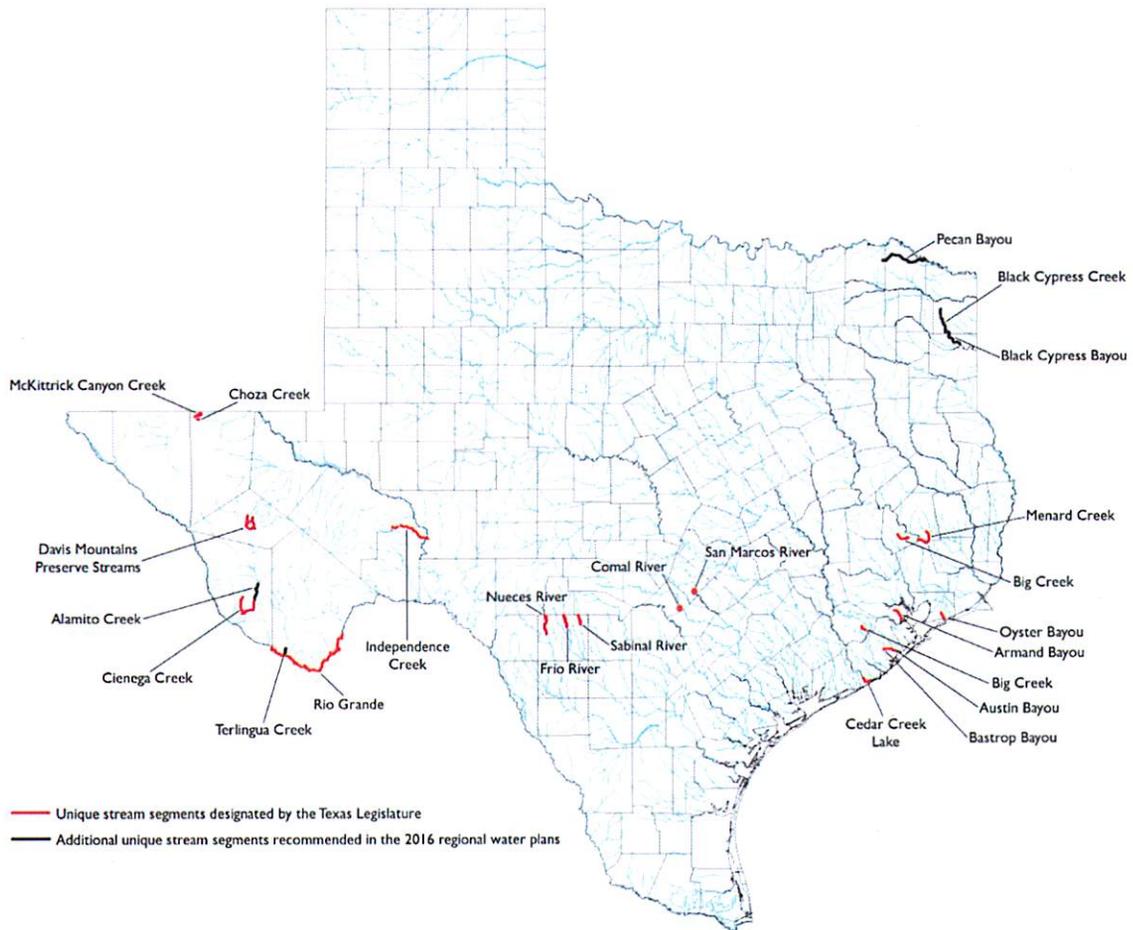
Since the 2002 planning cycle, the first round of regional water planning after the implementation of Senate Bill 1, 28 unique stream segments have been recommended by the Texas Water Development Board (TWDB) for designation by the legislature. Senate Bill 3, passed by the 80th Texas Legislature, designated 19 segments recommended in the 2007 State Water Plan, and the 84th Texas Legislature designated five segments from the 2012 State Water Plan with passage of House bill 1016. These designated stream segments are shown in Figure 1.

The Board should consider recommending in the 2017 State Water Plan that the legislature designate all five listed segments recommended by the regional water planning groups as unique stream segments pursuant to TWC §16.051(f) as follows:

- Black Cypress Bayou
- Black Cypress Creek
- Alamito Creek
- Pecan Bayou
- Terlingua Creek

Figure 1 shows the unique stream segments previously designated by the legislature (in red) and the stream segments recommended in the 2016 Regional Water Plans for designation (in black).

Figure 1: Designated and recommended unique stream segments



Issue 2: Unique reservoir site designation

EA Recommendation: The legislature should designate 11 sites recommended by the regional planning groups as having unique value for the construction of reservoirs for protection under Texas Water Code §16.051(g) and declare which reservoir sites that are subject to Texas Water Code §16.051(g-1) met the requirement to retain their designation after September 1, 2015

Background

Pursuant to TWC §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)

TWC §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. There remain portions of Texas that will continue to rely on surface water reservoirs in order to provide affordable water supplies. For some areas, efficient reservoir sites remain an important option for providing a large volume of renewable, affordable water supply. As evidenced in the regional water plans, 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.

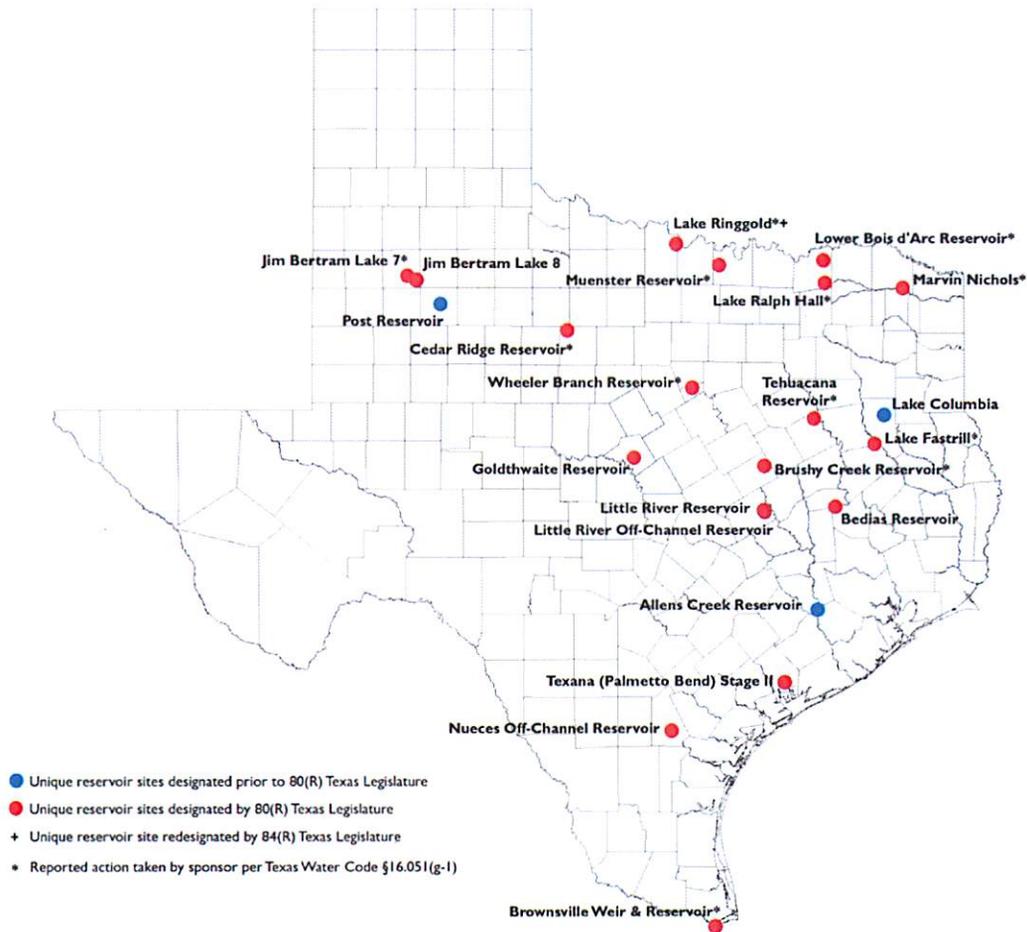
Designation of sites of unique value for the construction of reservoirs by the Texas Legislature provides an important measure of protection for these sites for future development. While designation of unique sites by the Texas Legislature does prevent some actions that could threaten the development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

Previous recommendations and designations

Prior to the 80th Texas Legislature, three unique reservoir sites had been previously designated by the legislature: Allens Creek Reservoir, Post Reservoir, and Lake Columbia (Figure 2). With the passage of Senate Bill 3, the 80th Texas Legislature designated an additional 19 reservoir sites (Figure 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” (TWC §16.051(g-1)).

The 2012 State Water Plan included three additional reservoir sites recommended for designation (Millers Creek Augmentation, Turkey Peak, and Coryell County Off-Channel Reservoir). These sites have never been designated as unique.

Figure 2: Unique reservoir sites previously designated by the Texas Legislature

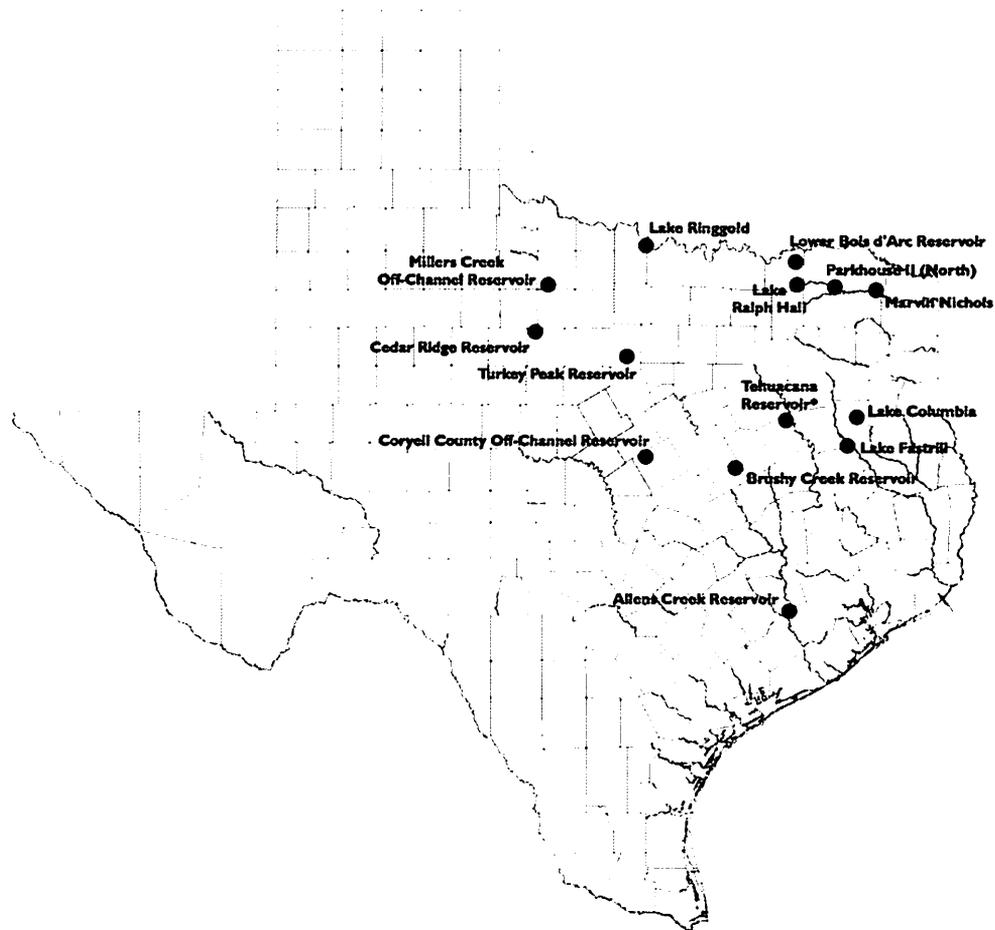


Draft recommended designations

In their 2016 Regional Water Plans, regional water planning groups recommended designation of a total of 14 reservoir sites as shown in Figure 3.

Although sponsors associated with a number of the Senate Bill 3 designated reservoir sites have reportedly taken some actions to fulfill the bill's requirement, it remains within the Texas Legislature's purview to determine whether a sponsor's action was adequate to retain the designation beyond September 1, 2015. To ensure continued designation, regional water planning groups recommended re-designation of some of those reservoir sites (Figure 3). Now that the deadline has passed, it would be beneficial to regional water planning groups and the sponsors of these reservoir projects if the legislature acted to specify which of the reservoir sites that are subject to TWC §16.051(g-1) met the requirement to retain their designations after September 1, 2015.

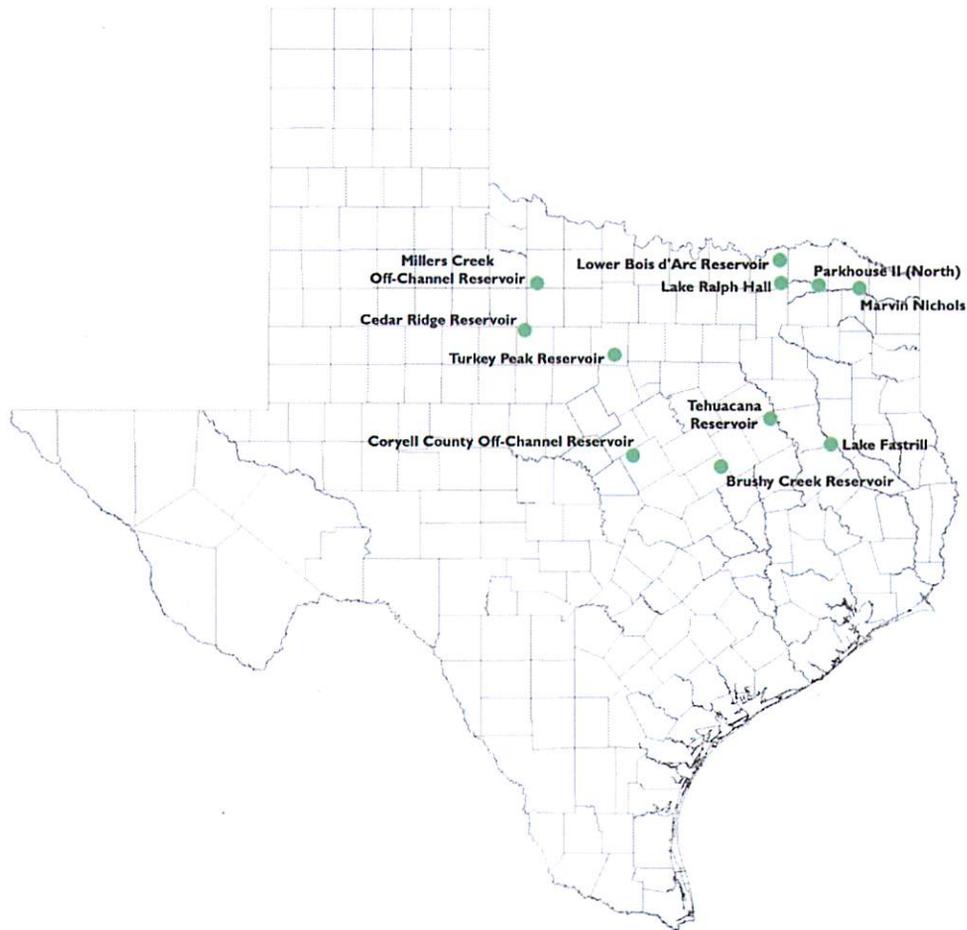
Figure 3: Unique reservoir sites recommended for designation in the 2016 Regional Water Plans



The Board should consider recommending that the legislature designate the following 11 reservoir sites as unique (Figure 4):

- Brushy Creek Reservoir
- Cedar Ridge Reservoir
- Coryell County Off-Channel Reservoir
- Lake Ralph Hall
- Lake Fastrill
- Lower Bois d'Arc Reservoir
- Marvin Nichols
- Millers Creek Off-Channel Reservoir
- Parkhouse II (North)
- Tehuacana Reservoir
- Turkey Peak Reservoir

Figure 4: Reservoir sites to be considered by Board for recommendation as unique



This recommendation consists of those sites that were recommended in the 2016 Regional Water Plans for designation by the legislature, (including some sites that may have met the requirements under TWC §16.051(g-1)), excluding those reservoir sites designated by the legislature and that are not subject to TWC §16.051(g-1) and therefore remain as designated reservoir sites.

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

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

Under TWC §16.053(e)(2-a), the specific desired future conditions on which each regional water planning cycle is based is 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 regional water

planning group members in the form of “moving target” dates. The interrelated 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 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*, the date of actual *adoption* of desired future conditions is not date-certain. Once desired future conditions are *proposed*, it is estimated that it will take approximately an additional nine months for their *adoption* but that time frame is not set forth in statute. The TWDB cannot produce and deliver the resulting modelled available groundwater numbers for use by groundwater districts and regional planning groups until it receives the adopted desired future conditions. The estimated time required for TWDB to develop and deliver modelled available groundwater numbers is 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. It is anticipated, for example, that the 2017 State Water Plan will be adopted as early as the summer of 2016, whereas previous state water plans were adopted closer to the statutory deadline.

By replacing the statutory deadline for *proposed* desired future conditions under TWC §36.108 with a deadline for *adoption* of desired future conditions and tying that adoption deadline to the existing state water plan adoption deadline, it will increase certainty and better synchronize the joint planning 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 regional water planning groups.

With regard to the next joint planning and 2022-2026 regional water planning cycle, 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 modelled available groundwater numbers.
- 2022-2026 regional water plans must be consistent with the desired future conditions in effect as of January 5, 2022.

These recommendations have been reviewed by legal counsel and comply with applicable statutes and TWDB rules.