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

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Amanda Lavin, Assistant Executive Administrator
Les Trobman, General Counsel

FROM: Kaye Schultz, Assistant General Counsel

DATE: September 22, 2016

SUBJECT: Rulemaking for Adoption - Revisions to 31 Texas Administrative Code (TAC) Chapter 354, Memoranda of Understanding (MOUs)

ACTION REQUESTED

Adopt and authorize publication of 31 TAC §354.2, §354.5, and §354.7 through §354.15, incorporating into rule MOUs and similar agreements between the TWDB and various state agencies; and repeal of 31 TAC §354.2 and §354.5, agreements that have expired or have been superseded.

BACKGROUND

Texas Water Code §6.104 requires the TWDB to adopt by rule any MOU between the Board and another state agency. Adoption and publication of these rules would incorporate into rule 11 existing MOUs and similar agreements between the TWDB and other state agencies, including the Office of the Governor, the Texas Commission on Environmental Quality, the Texas Railroad Commission and the Public Utility Commission of Texas.

Adoption and publication of the rule repeal would eliminate an MOU that has been fulfilled and an agreement that has been superseded.

KEY ISSUES

The adopted rules would incorporate existing MOUs and other agreements with various state agencies into Chapter 354 rules, as required by Texas Water Code §6.104. The proposed rules were published in the August 28, 2016 edition of *The Texas Register*. No public comments were received.

Authorizing adoption and publication would add the following existing MOUs and other agreements to Chapter 354:

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 | Peter Lake, Member

Jeff Walker, Executive Administrator

1. §354.2 - Memorandum of Understanding Between the Texas Water Development Board and the Office of the Governor, for TWDB administration of $6.8 million in emergency appropriations for flood notification systems and floodplain management.

2. §354.5 – Letter of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality regarding coordinated reviews related to the design criteria for public water systems and wastewater facility construction. This 2015 agreement supersedes and is proposed to replace the current §354.5, which is being proposed for repeal.

3. §354.7 – Letter of Agreement Between the Railroad Commission (RRC) and the Texas Water Development Board regarding access to linen maps owned by the RRC that will be used by TWDB to identify and designate regional brackish groundwater production zones.

4. §354.8 – Memorandum of Understanding Between the Texas Water Development Board and the Texas Department of Information Resources for electronic and information resources accessibility web scanning services.

5. §354.9 – Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board to cooperate in having the Texas Natural Resources Information System (TNRIS) maintain a public online map viewer for electric Certificate of Convenience and Necessity boundaries.

6. §354.10 – Memorandum of Agreement Between the Texas Water Development Board, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality to establish and maintain an Instream Flow Studies Coordinating Committee.

7. §354.11 – Memorandum of Agreement Between the Texas Water Development Board and the Texas General Land Office to coordinate installation and operation of the Texas Coastal Ocean Observation Network.

8. §354.12 – Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality to coordinate program responsibilities related to groundwater conservation district management approval, review and oversight.

9. §354.13 – Memorandum of Agreement Between the Texas Water Development Board and the Texas Board of Professional Geoscientists to coordinate information regarding complaints under and potential violations of the Texas Geoscience Practice Act.

10. §354.14 – Agreement Between the Texas Water Development Board and the Texas Department of Transportation (TxDOT) allowing TWDB access to property under the jurisdiction of TxDOT in order to monitor water wells.

11. §354.15 – Agreement Between the Texas Water Development Board and the Texas Comptroller of Public Accounts providing that TWDB will share debt and financial liability information with the Comptroller and outlining the terms of use for the information.

Adoption and publication of the rule repeal would remove two existing agreements from Chapter 354:

1. §354.2 - Memorandum of Understanding Between the Texas Water Development Board and the International Boundary & Water Commission, related to construction of an international wastewater treatment facility in Nuevo Laredo, Mexico. That facility has been completed and the terms of the MOU have been fulfilled.

2. §354.5 - Letter of Agreement between the Texas Water Development Board and the Texas Natural Resource Conservation Commission. This repeal would remove a superseded agreement on design criteria with the TCEQ and replace it with a recently executed replacement agreement, which is proposed as the new §354.5.

RECOMMENDATION

Authorize adoption and publication of additions to and repeal of rules in 31 TAC Chapter 354, related to MOUs and similar agreements between the TWDB and various state agencies.

Attachments:

Additions to 31 TAC Chapter 354 for publication in the Texas Register
Repeal of 31 TAC §354.2 and §354.5 for publication in the Texas Register

The Texas Water Development Board (TWDB) adopts new 31 Texas Administrative Code (TAC) §§354.2, 354.5, and 354.7 through 354.15, as published in the August 26, 2016 issue of the *Texas Register* (41 TexReg 6395). Existing 31 TAC §§354.2 and 354.5 are repealed elsewhere in this issue of the Texas Register.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED RULES.

Texas Water Code §6.104 requires the TWDB to adopt by rule any MOU between the Board and another state agency. These adopted rules incorporate existing MOUs and similar agreements between the TWDB and other state agencies.

DISCUSSION OF THE RULES.

§354.2. Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.

The Office of the Governor (OOG) and the TWDB executed an MOU authorizing the TWDB to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D.

The provisions of the MOU require the TWDB to administer up to $6.8 million in the Disaster Contingency Account, General Revenue Account 0453, to enhance existing flood notification systems and make funds available to state and local entities for floodplain management. The adopted rule contains the MOU that went into effect on December 10, 2015 and will expire on August 31, 2017, or upon expenditure of all available funds.

§354.5. Letter of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.

Since September 21, 1992, the TWDB and the Texas Commission on Environmental Quality (TCEQ) have coordinated reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). This Agreement, which was executed on July 1, 2015, replaces all prior and existing LOAs in effect with the TCEQ and its predecessor agencies and accurately reflects the current interaction between the TWDB and the TCEQ during coordinated review of water supply projects seeking financing from the TWDB. The existing §354.5 is published for repeal elsewhere in this issue of the Texas Register.

§354.7. Letter of Agreement Between the Railroad Commission of Texas and the Texas Water Development Board.

The Railroad Commission of Texas (RRC) and the TWDB executed an LOA regarding access to linen maps owned by the RRC that will be used by the TWDB to identify and designate regional brackish groundwater production zones as mandated by the 84th Legislature. The adopted rule contains the LOA that went into effect on February 25, 2016.

§354.8. Memorandum of Understanding Between the Texas Water Development Board and the Texas Department of Information Resources.

The TWDB and the Texas Department of Information Resources (DIR) executed an MOU for electronic and information resources accessibility web scanning services. The MOU provides that DIR, through a third-party service provider, will conduct no-cost monthly accessibility scans of pages on the TWDB website and provide scan reports to TWDB and DIR. The adopted rule contains the MOU that went into effect on March 30, 2015 and continues until terminated by either of the parties or on termination of the underlying agreement with the third-party service provider.

§354.9. Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board.

The TWDB executed an MOU with the Public Utility Commission of Texas (PUCT) to maintain a public online map viewer. The MOU provides that the Texas Natural Resources Information System (TNRIS), a TWDB division, will maintain the existing public online map viewer with data collection and assistance from the PUCT. The adopted rule contains the MOU that went into effect on May 18, 2016 and will terminate on August 31, 2017 unless a two-year renewal option is exercised.

§354.10. Memorandum of Agreement Between the Texas Water Development Board, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality.

The TWDB, the Texas Parks and Wildlife Department (TPWD) and the TCEQ executed an MOA to establish an Instream Flow Studies Coordinating Committee. The adopted rule contains the MOA that went into effect on October 17, 2002 and continues until terminated by 30-day written notice of intent to cancel by any of the participating agencies.

§354.11. Memorandum of Agreement Between the Texas Water Development Board and the Texas General Land Office.

The TWDB and the Texas General Land Office (GLO) executed an MOA to coordinate the installation and operation of the Texas Coastal Ocean Observation Network. The adopted rule contains the MOA that went into effect on September 22, 2003 and continues until terminated by either party on 30-day written notice.

§354.12. Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.

The TWDB and the TCEQ executed an MOA to coordinate program responsibilities related to groundwater conservation district management planning approval, review and oversight. The adopted rule contains the MOA that went into effect on September 17, 2007 and continues until terminated by either party on 30-day written notice.

354.13. Memorandum of Agreement Between the Texas Water Development Board and the Texas Board of Professional Geoscientists.

The TWDB and the Texas Board of Professional Geoscientists (TBPG) executed an MOA to coordinate information regarding complaints under and potential violations of the Texas Geoscience Practice Act. The adopted rule contains the MOA that went into effect on June 13, 2014 and continues until rescinded by either agency.

§354.14. Agreement Between the Texas Water Development Board and the Texas Department of Transportation.

The TWDB and the Texas Department of Transportation (TxDOT) entered into an Agreement for Right of Entry and Temporary Use of Highway Right of Way effective March 31, 2005 and continuing until terminated by either party on 30-day written notice. The adopted rule contains the Agreement that allows TWDB access to property under the jurisdiction of TxDOT in order to monitor water wells and outlines the conditions of such access and advance notice required.

§354.15. Agreement Between the Texas Water Development Board and the Texas Comptroller of Public Accounts.

The TWDB and the Texas Comptroller of Public Accounts (Comptroller) entered into an Agreement in Furtherance of Transparency Initiative on April 4, 2014. The adopted rule contains the Agreement that provides for TWDB to share debt and financial liability information with the Comptroller and outlines the terms of use for the information.

REGULATORY ANALYSIS.

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because none of the adopted rules meets the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by rule the MOUs and similar agreements as required by Texas Water Code §6.104.

Even if the adopted rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This

rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather is also adopted under authority of Texas Water Code §§6.101 and 6.104. Therefore, these adopted rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The board evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these rules is to adopt by rule the MOUs and similar agreements between the Texas Water Development Board and various state agencies.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these adopted rules because this rulemaking is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated these adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rules do not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT.

No comments were received.

STATUTORY AUTHORITY.

These rules are adopted under Texas Water Code §6.101, which gives the TWDB authority to adopt rules, and §6.104, which requires the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

This adoption affects Texas Water Code §6.104.

<rule>

<u>§354.2. Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.</u>

<u>(a) SECTION I. RECITALS.</u>

(1) WHEREAS, pursuant to Texas Government Code §401.065, the Governor by interagency contract may authorize an agency of the executive branch of state government to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D; and

(2) WHEREAS, the Texas Water Development Board has authority under Texas Water Code, Section 6.190 to enter into this agreement; and

(3) WHEREAS, on November 5, 2015, the Governor determined that an emergency exists affecting the health, public safety, and economic prosperity of Texans with respect to flood notification systems and floodplain management planning; and

(4) WHEREAS, the Texas Comptroller of Public Accounts (the Comptroller) has endorsed use of funds in the Disaster Contingency Account, General Revenue Account 0453, as statutorily allowable for purposes of preparing for a disaster, including installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management; and

(5) WHEREAS, on November 16, 2015, the Comptroller certified that the full cash balance of the special account, $6.8 million, is available for appropriation; and

(6) WHEREAS, on November 16, 2015, the Texas Legislative Budget Board (LBB) approved the appropriation of the full balance of the special account for enhancing flood notification systems and improving state and local floodplain management;

(7) WHEREAS, on November 17, 2015, the Governor filed with the Secretary of State and the LBB a copy of the Governor's original certification and the returned certification containing the Comptroller's endorsement.

(8) NOW THEREFORE, the Texas Water Development Board (TWDB) and the Office of the Governor (OOG) hereby enter into this Memorandum of Understanding (MOU) for the purposes set forth herein.

(b) SECTION II. PARTIES. This MOU is made and entered into between the TWDB, an agency of the State of Texas, and the OOG, also an agency of the State of Texas.

(c) SECTION III. PURPOSE.

(1) The purpose of this MOU is to make available to TWDB an appropriation of up to $6.8 million in the Disaster Contingency Account, General Revenue Account 0453, for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management ("the emergency funding"), under the authority provided by House Bill 1, Rider 3, Acts of the 84th Texas Legislature, Trusteed Programs Within the Office of the Governor.

(2) The Parties will work together to accomplish the transfer of funds from the OOG to the TWDB.

(d) SECTION IV. PERIOD OF PERFORMANCE. This MOU will become effective upon signature by the parties and will terminate on August 31, 2017.

(e) SECTION V. PERFORMANCE.

(1) OOG RESPONSIBILITIES. The OOG shall be responsible for making available up to $6.8 million in the Disaster Contingency Account, General Revenue Account 0453, for administration by the TWDB during the biennium ending on August 31, 2017 for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management.

(2) TWDB RESPONSIBILITIES.

(A) The TWDB shall be responsible for administering the emergency funding made available under this MOU for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management.

(B) The TWDB shall be responsible for administering the emergency funding in accordance with applicable state laws, programmatic requirements and agency rules.

(C) The TWDB shall ensure that the applicable provisions for grant contracts or procurement contracts made under the emergency funding comply with the relevant state or federal laws.

(D) The TWDB shall report to the OOG, at least quarterly, on the status of the administration of the emergency funding, including financial reporting on the usage of the emergency funds.

(E) The TWDB shall hold a stakeholder meeting(s), as directed by the OOG.

(f) SECTION VI. TERMINATION. This MOU shall terminate on August 31, 2017, or upon expenditure of all available appropriated funds unless otherwise terminated earlier by the parties.

(g) SECTION VII. GENERAL PROVISIONS.

(1) Duty to Maintain Records; Records Retention. TWDB shall maintain adequate records to support its administration of the emergency funding. TWDB shall maintain such records as are deemed necessary by the OOG and auditors of the State of Texas or the United States, or such other persons or entities designated by the OOG, to ensure proper accounting for all costs and performances related to this MOU, for a period of seven (7) years after the end of this MOU.

(2) Access to Records and Right to Audit; State Auditor. TWDB shall grant access to all records, of any kind, relevant to this project to OOG, auditors of the State of Texas, or such other persons or entities designated by OOG for the purposes of inspecting, auditing, evaluating or copying by the OOG, the State of Texas or such other authorized persons or entities designated by the OOG. All records, shall be subject to examination or audit by the OOG, auditors of the State of Texas, or such other persons or entities designated by the OOG in accordance with all

applicable state and federal laws, regulations or directives. TWDB will direct any grantee or subcontractor with regard to this project to likewise permit access to, inspection of, and reproduction of all records of TWDB's grantee(s) or subcontractor(s). In addition to and without limitation on the other audit provisions of this MOU, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of TWDB or any of its grantees or subcontractors receiving funds from the TWDB for the project. The acceptance of funds by TWDB or any other entity or person directly under this MOU or indirectly through a grant or subcontract is acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, TWDB or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. TWDB further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. TWDB shall ensure that this paragraph regarding audit rights and the requirement to cooperate is included in any grant or subcontract it awards for this project.

(3) Texas Public Information Act. Information, documentation and other material in connection with this MOU or any resulting grant contract or subcontract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act). TWDB acknowledges that information created or exchanged in connection with this MOU is subject to the PIA, and TWDB agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to the state and agrees to require this provision in any grant or subcontract awarded for this project. TWDB will cooperate with OOG in the production of documents or information responsive to a request for information.

(4) Funding Limitation. TWDB agrees that nothing in this MOU will be interpreted to create an obligation or liability of the OOG in excess of the funds delineated in this MOU. TWDB agrees that funding for this MOU is subject to the actual receipt by the OOG of funds appropriated to the OOG. TWDB agrees that the funds, if any, received from the OOG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of the OOG for the purpose of this MOU. TWDB agrees that notwithstanding any other provision of this MOU, if the OOG is not appropriated the funds or if the OOG does not receive the appropriated funds for this project, or if the funds appropriated to the OOG for this project are required to be reallocated to fund other state programs or purposes, the OOG is not liable to pay the TWDB any remaining balance on this MOU.

(5) Amendment. This MOU may only be amended by written agreement between the parties.

(h) The effective date of this MOU is the last date shown signed below.

(i) Dated December 10, 2015.

§354.5. Letter of Agreement Between Texas Water Development Board and Texas Commission

on Environmental Quality.

(a) INTRODUCTION

(1) The Texas Water Development Board (TWDB) provides financial assistance for the construction, acquisition, or improvement of water supply projects, and therefore performs engineering reviews and analyses of water supply projects constructed with state or federal funds administered by the TWDB. The Texas Commission on Environmental Quality (Commission) through its regulatory authority conducts a similar review and analyses of the water supply projects financed by the TWDB.

(2) Since September 21, 1992, the TWDB and the Commission have coordinated the reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). The LOA was last revised June 20, 2001 to reflect changes in statute related to the review of wastewater facilities. This Agreement is implemented to replace all prior and existing LOAs in effect with the Commission and its predecessor agencies, and to accurately reflect the current interaction between the TWDB and the Commission during the coordinated review of water supply projects seeking financing from the TWDB.

(b) SCOPE OF AGREEMENT

(1) The TWDB will review submitted "Plans and Specifications," as defined herein, for water supply projects seeking financing from the TWDB in a manner that will satisfy the Commission's requirements related to the design of public water systems.

(2) The Commission agrees to accept TWDB review of Plans and Specifications in lieu of its review for certain water facilities as described under the "Coordinations" section herein.

(c) DEFINITIONS. "Plans and Specifications" means construction drawings and construction specifications, and engineering design calculations required by Commission rules on design criteria for public water systems. The term also includes construction contract change orders.

(d) LIMITS AND EXCLUSIONS.

(1) This Letter of Agreement is applicable only to projects that receive financing from the TWDB and require coordination with the Commission.

(2) Only the Commission may grant conditional approvals and variances to its requirements relating to the review and processing of Plans and Specifications for public water facilities.

(3) The TWDB's review and administration of a water supply project will not serve as an approval of an application for any permit, which is regulated by the Commission.

(e) COORDINATIONS.

(1) The TWDB will coordinate the review of Plans and Specifications with the Commission on water supply projects financed by the TWDB that involve the construction of, or improvements to, surface water treatment plants, public water supply wells, new interconnections, disinfection, and treatment projects. For these water supply projects, the TWDB and Commission agree to rely on the TCEQ Letter of Approval of Plans and Specifications for design criteria.

(2) Plans and Specifications for other water supply projects financed by the TWDB will be reviewed only by the TWDB. The TWDB will review Plans and Specifications of water supply projects for public water systems financed by the TWDB to ensure satisfaction of the Commission's requirements related to public water systems and provide TCEQ a courtesy copy of the TWDB approval for compliance purposes.

(3) For all water supply projects reviewed for financing by the TWDB requiring coordination with the Commission, the TWDB will prepare a single document signifying the TWDB's approval of the underlying Plans and Specifications. The TWDB will send one (1) copy of its approval document to the applicant and one (1) copy of its approval document to the Commission.

(4) Following approval of all water supply project Plans and Specifications, the TWDB will proceed, in accordance with applicable rules and requirements, with construction monitoring.

(f) EXECUTION, ADOPTION, AND MODIFICATION. This Agreement is effective when signed by the designated representatives of both the TWDB and Commission. This Agreement is subject to approval of the Board of the TWDB. This Agreement may be modified by mutual and written consent of the parties.

(g) DURATION. The Agreement shall continue in full force and effect until cancelled or superseded by either party. The party requesting cancellation shall give 90-days written notice of intent to cancel and shall advise the other party in writing of the reasons for cancellation.

(h) SEVERANCE PROVISION. Should any one or more provisions of this Agreement be held to be null, void, or for any reason without force or effect, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions of this Agreement, which shall remain in full force and effect.

(i) IN WITNESS THEREOF the parties hereto cause this Letter of Agreement to be duly executed.

(j). Signed on July 1, 2015.

§354.7. Letter of Agreement Between the Railroad Commission of Texas and the Texas Water Development Board.

(a) This Letter of Agreement ("LOA") is made effective as of the date below and is made by and between the Railroad Commission of Texas ("RRC"), an agency of the State of Texas, and the Texas Water Development Board ("TWDB"), an agency of the State of Texas.

(b) WHEREAS, the RRC owns linen maps used by the RRC Groundwater Advisory Unit ("GAU") to record oil and gas related groundwater regulatory determinations, geophysical log locations, geologic cross-section locations, and other geologic information;

(c) WHEREAS, the linen maps were purchased in the 1950s and 1960s from various vendors and/or mapping companies, which may or may not still be in existence;

(d) WHEREAS, House Bill 30, 84th Texas Legislature, Regular Session, tasked the TWDB with identifying, designating, and reporting on regional brackish groundwater production zones;

(e) WHEREAS, the RRC desires to share the linen maps with TWDB for purposes of fulfilling the legislature's above-referenced mandate.

(f) NOW, THEREFORE, in consideration of the foregoing, the RRC and the TWDB express their understanding and agreement as follows:

(1) The RRC will load copies of all GAU linen maps onto an external hard drive provided by the TWDB. The TWDB will then move the GAU linen map files to a limited-access folder on the TWDB server.

(2) The TWDB acknowledges that the linen maps were created by entities/persons other than the RRC and may be copyrighted material.

(3) The TWDB agrees to use the images of the linen maps as "read only," for inspection and research purposes in line with the legislature's mandate.

(4) The TWDB agrees that printing, photocopying, taking pictures, or using any other method of copying the images of the linen maps may constitute copyright infringement.

(5) The TWDB agrees that disseminating the external hard drive, copies of the external hard drive, or copies of the images of the linen maps on the external hard drive to any other entity, agency, or person outside of the TWDB is prohibited.

(6) The TWDB agrees that it will inform any third-party contractors working on the project that the linen maps may be copyrighted material and that printing, photocopying, taking pictures, or using any other method of copying images of the linen maps and/or disseminating the external hard drive or copies of the external hard drive to any other entity, agency, or person outside of the TWDB is prohibited.

(7) The TWDB acknowledges that noncompliance with any terms and conditions of this LOA, either by the TWDB or by any third-party contractor hired by the TWDB, may result in copyright infringement.

(g) In witness whereof, the Railroad Commission of Texas and the Texas Water Development Board have approved this LOA on the 25th day of February 2016, as evidenced by the signatures below.

§354.8. Memorandum of Understanding for Inclusion in DIR's WCAG 2.0 Web Accessibility Scanning Program.

(a) This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the governmental entities shown below as Agreement Parties, pursuant to the authority granted and in compliance with the provisions of Texas Government Code, Chapter 771, the Interagency Cooperation Act, and Chapter 2054, Subchapter M, Access to Electronic and Information Resources by Individuals with Disabilities.

(b) Agreement Parties.

(1) Receiving Agency: Texas Water Development Board, 1700 N. Congress Ave., Austin, Texas 78701.

(2) Performing Agency: Department of Information Resources (DIR), 300 W. 15th Street, Suite 1300, Austin, Texas 78701.

(c) Scope.

(1) This Memorandum of Understanding (MOU) is entered into by and between the Texas governmental entities shown above as Agreement Parties. The Department of Information Resources (DIR) will provide to the receiving agency the services described in this MOU for electronic and information resources (EIR) accessibility web scanning services. DIR has contracted with a third-party provider to perform accessibility scans on a monthly basis. Initially, the scans will be performed by SiteImprove pursuant to contract DIR-ITS-SITEIMPROVE-001.

(2) There is no charge to the receiving agency for the services provided by DIR. The term of this MOU begins on the date of the last party to sign and will end upon termination of the underlying agreement with the third-party service provider, or anytime at the discretion of DIR. If the receiving agency elects to terminate these services at any time prior to the expiration of the MOU, the receiving agency will provide DIR with a minimum of ten (10) days prior written notice. This MOU may be amended by mutual agreement of the parties. Any amendment must be in writing.

(d) Program Overview.

(1) The WCAG 2.0 Web Accessibility Scanning Program is conducted as part of the State of Texas initiatives in support of Texas government statutes and administrative rules regarding EIR accessibility for people with disabilities. This document contains the services to be provided to Texas Water Development Board (TWDB) by DIR for accessibility scanning of a subset of the receiving agency's public web pages.

(2) The purpose of the program is to assist the agency in making its public websites accessible for all Texas citizens, including people with disabilities, and sets forth the responsibilities for each party. There is NO cost to agencies for this service.

(e) Objectives and Benefits of the Program.

(1) The primary objective of the program is to assist agencies in making their public websites accessible for all Texas citizens including people with disabilities, and in support of meeting WCAG 2.0 web accessibility technical standards which are expected to be integrated into Texas Administrative Codes (TAC) Chapter 206 and 213 once they have been adopted as part of the revisions to US Section 508 of the Rehabilitation act of 1973. The use of this service will allow agencies to:

(A) Increase accessibility compliance levels of agency public websites

(B) Obtain precise, critical accessibility information about a subset of an agency's live public website that might not otherwise be available/affordable

(C) Use the reported information and supporting resources to remediate identified accessibility issues

(D) Mitigate risk to the state by demonstrating progress and initiative toward creating an inclusive IT environment

(E) Lay the groundwork for agencies to establish accessibility baselines, goals, and metrics to track progress

(2) The service also scans for and reports on:

(A) Broken links, Misspellings, and Consistency issues

(B) Website availability and performance

(C) Search Engine Optimization (SEO) issues

(f) Description of Services.

(1) Beginning at the home page of an agency's website, approximately 150 pages will be scanned monthly for accessibility issues using the Worldwide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0) technical standards. PDF documents on a website discovered during the scan will also be checked for accessibility. It should be noted that automated testing (web scanning) tools/services do not currently have the ability to test for all WCAG 2.0 accessibility criteria and that manual testing using assistive technologies should also be performed on a subset of the scanned pages to validate full compliance to this standard.

(2) Agencies will be scheduled into the scan environment after a signed MOU has been received by DIR. Once the receiving agency is included in the scanned environment, scans will be performed monthly, until terminated by either party.

(3) DIR will work with the receiving agency's EIR Accessibility Coordinator to set up and

validate scanned pages to ensure data is accurate.

(4) Agency EIR Accessibility Coordinators will receive a login ID to access their agency's detailed reports residing on DIR's secure area of the vendor's (SiteImprove) server. Agencies will also be able to add additional users of the tool.

(5) The receiving agency's accessibility coordinator will be notified when each monthly scan is complete and reports are available for viewing.

(6) Agency reports will provide summary and detailed information on accessibility and other information for the agency's scanned pages and PDFs, including:

(A) Number of pages with errors

(B) Error types, locations, and code snippets where the errors occurred

(C) Support information with resources and techniques for remediating the identified errors

(D) Broken links, misspellings, and consistency issues

(E) Website availability and performance

(F) Search Engine Optimization (SEO) issues

(7) Self-paced training resources on use of the service user interface will be made available from the vendor.

(g) Scan Results, Data Ownership, and Sharing.

(1) Scan results are owned by the receiving agency.

(2) The receiving agency will have access to only the data applicable to itself.

(3) DIR will have viewing access to all data included in the scan for use in statewide analysis and metrics so that it can:

(A) assist agencies with questions related to scan results

(B) aggregate results to identify common issues and track progress at the enterprise level

(4) DIR will not share individual agency results with third parties, unless written approval by authority within the agency is provided.

(5) In the event of public information or legislative requests, requestors will be referred to participating agencies or responded to jointly in collaboration with DIR.

(h) Tasks and Activities. Below is a table of the tasks and activities associated with agency start up and ongoing program activities.

(1) Task/Activity: Execution of MOU; Performers: DIR/Agency

(2) Task/Activity: Provide initial scanning date to agency; Performers: DIR/Agency

(3) Task/Activity: Contact agency EIR Accessibility Coordinator to inform them of agency scan initiation; Performers: DIR

(4) Task/Activity: Provide login credentials to agency to facilitate agency review of results; Performers: DIR/Service Vendor

(5) Task/Activity: Perform initial scan; Performers: Service Vendor

(6) Task/Activity: Analyze results and tune settings; Performers: DIR/Agency/Service Vendor

(7) Task/Activity: Validate results; Performers: Agency

(8) Task/Activity: Integrate site into monthly scans; Performers: Service Vendor

(9) Task/Activity: Websites will be sampled monthly. Agencies receive new scan reports after each completed scan and works with appropriate staff to remediate; Performers: Agency/Service Vendor;

(10) Task/Activity: Answer results questions and provide user support; Performers: DIR/Service Vendor.

(i) Contacts.

(1) DIR Contacts:

(A) PRIMARY CONTACT: Jeff Kline, Statewide EIR Accessibility Coordinator, 512-463-3248, Jeff.Kline@dir.texas.gov.

(B) SECONDARY CONTACT: Deborah Hujar, Director of Planning, Policy, and Governance, 512-463-6117, Deborah.Hujar@dir.texas.gov

(2) Agency Contacts:

(A) EIR ACCESSIBILITY COORDINATOR: Matt Erickson, 512-410-6602, matt.erickson@twdb.texas.gov

(B) IRM: Wendy Barron, 512-463-7862, wendy.barron@twdb.texas.gov

(C) ADDITIONAL CONTACT: Darrell Tompkins, Manager of IT Security & Systems

Infrastructure, 512-463-9921, Darrell. Tompkins@ twdb.texas.gov

(j) Certifications. The undersigned Parties hereby certify that:

(1) The matters specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;

(2) This MOU serves the interest of efficient and economical administration of state government; and

(3) The services, supplies, or materials in this MOU are not required by Section 21, Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

(4) The Agreement Parties execute this MOU to be effective upon the date of the last party to sign.

(5) Dated March 30, 2015.

§354.9. Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board

(a) This Memorandum of Understanding (MOU) is entered into between the Public Utility Commission of Texas (PUCT), 1701 N. Congress Ave., Austin, TX 78701, an agency of the state of Texas, and the Texas Water Development Board (TWDB), 1700 N. Congress, Austin, TX 78701, also an agency of the State of Texas.

(b) The parties assert that each has the authority to enter into this agreement under Texas Government Code §771.003. The TWDB is authorized by Texas Water Code §§6.104 and 6.190 to enter into this agreement.

(c) The TWDB and the PUCT hereby enter into this agreement to maintain a basic public online map viewer.

(d) The TWDB, through its Texas Natural Resources Information Systems (TNRIS) division, agrees that it will:

(1) Maintain the existing public online map viewer for the electric Certificate of Convenience and Necessity (CCN) boundaries as allowed by the Department of Information Resources (DIR) and dependent upon Data Center Services (DCS) exemption policies

(2) Manage and update existing PUCT data and data feeds as requested by the PUCT and mutually agreed by the parties

(3) Support data exchange needs of the PUCT through PUCT's ArcGIS online application

(4) Maintain the confidentiality of any data for which the submitting party asserts confidentiality as required by law

(5) Provide training to PUCT staff on use of the system up to two four-hour training sessions per year. Additional training will be offered to assist the PUCT staff develop the capacity to support the application as needed.

(e) The PUCT agrees that it will:

(1) Locate, acquire, and collect data for TNRIS to use in creating the GIS layers

(2) Assist in automating the data exchange as needed

(3) Notify TNRIS of any information that may be considered confidential

(f) TWDB is not responsible for verification of data provided by PUCT.

(g) This agreement does not constitute a basis for financial obligations or expenditures. Each agency will expend its own funds in fulfillment of this agreement.

(h) This agreement is effective on the date that the last party executes this document and terminates on August 31, 2017 with an option to renew for an additional two-year period. This agreement may be amended as needed, upon written agreement by both parties. This agreement may be terminated by either party on 30 days written notice.

(i) The parties hereby agree to be bound by this Memorandum of Understanding as indicated by their signatures below.

(j) Dated May 18, 2016.

§354.10. Memorandum of Agreement Between the Texas Water Development Board, Texas Parks and Wildlife Department, and Texas Commission on Environmental Quality Relating to Instream Flow Studies

(a) WHEREAS, Senate Bill 2, as enacted by the 77th Legislature, Regular Session, provided important responsibilities to the above-referenced agencies with regard to studies of instream flows through year 2010;

(b) WHEREAS, it is extremely important that the studies authorized by the 77th Legislature be accomplished in an effective and efficient manner that maximizes the utilization of available resources;

(c) WHEREAS, the Texas Water Development Board (Board) is authorized by Section 6.190 of the Texas Water Code to enter into this agreement, the Texas Commission on Environmental Quality (Commission) is authorized by Section 5.229 of the Texas Water Code to enter into this agreement, and the Texas Parks and Wildlife Department (Department) is authorized by Section

11.0171 of the Texas Parks & Wildlife Code to enter into this agreement;

(d) WHEREAS, the results of the instream flow studies, the subject of this Memorandum of Agreement, shall be considered by the respective agencies in performance of their statutory duties and responsibilities. Nothing in this agreement restricts the use of the studies by the agencies in their statutory discretion, duties, and responsibilities;

(e) NOW, THEREFORE BE IT RESOLVED that the Board, Commission and Department do hereby make the following operating agreement regarding studies of instream flows as required by Section 16.059 of the Texas Water Code (Collection of instream Flow Data; Conduct of Studies).

(f) COORDINATING COMMITTEE

(1) An Instream Flow Studies Coordinating Committee (Committee) shall be established as a three-member Committee comprised of the Executive Administrator of the Board and the Executive Directors of the Department and the Commission, or their designees.

(2) The representative from the Board shall serve as chairperson of the Committee from the effective date of this agreement until August 31, 2003.

(3) Thereafter, the chairperson shall serve a one-year term and the chair shall be rotated annually, as agreed upon by the Committee, from the Board's representative to the Department's representative, and thence to the Commission's representative.

(4) The Committee shall meet at least annually and may meet more often as necessary and agreed upon by the Committee.

(g) DUTIES AND RESPONSIBILITIES

(1) The purpose of the Committee is to provide the overall policy, direction, and guidance for the completion of the instream flow studies authorized by the 77th Legislature.

(2) The Committee shall approve a programmatic work Plan by December 31, 2002, which shall include the following:

(A) a list of the priority segments to be studied and interim deadlines for publications;

(B) the scope of the studies;

(C) the assignment of agency responsibilities in conducting the studies;

(D) the timeframes in which the studies or parts of the studies are to be completed; and

(E) the general methods used to conduct the studies.

(3) The Committee shall ensure that resources of the agencies are utilized effectively and efficiently to accomplish the studies. To assist the Committee, each agency shall also designate lead staff to equally share oversight of the program studies, to maximize in-house capabilities of personnel and equipment, and to minimize costs to the state. The Committee shall also consider inviting cities, river authorities, water districts, other political subdivisions of the state, universities, and federal water agencies to cooperate with and participate in the conduct of these studies whenever practicable.

(4) The Committee shall establish an Interagency Science Team (Team) composed of staff scientists and engineers assigned to work on the studies by the agencies and their cooperators. The Team shall assist the Committee by drafting study plans and scopes of work, by supervising and facilitating contracts, and by conducting and reporting on the priority studies identified in the Work Plan.

(5) For all contracts by any agency for work to be performed in furtherance of the Work Plan, the Team shall draft the study plans and scopes of work and provide recommendations for contract facilitation prior to the agency's presentation of the contract to its board, commission, or other agency official possessing the authority to approve such contracts.

(6) The Committee shall ensure that a productive data and information exchange is accomplished among the agencies. Also, the parties hereto do each agree to promptly furnish, free of charge, any and all correspondence, memorandums, study reports, contracts, data and any other information relating to instream flow studies that may hereafter be requested by any of the parties hereto and which are not privileged and confidential under law.

(7) The Committee shall attempt to reach unanimous agreement on all decisions made in exercising its duties and responsibilities under this agreement, but in no event shall the failure of the Committee to reach a unanimous agreement on a decision frustrate or deter the intent, direction or purpose of this agreement or the duties and responsibilities of the Committee as defined hereunder.

(8) The Committee shall attempt to resolve technical disputes by seeking consensus from the Interagency Science Team. The Committee may direct Team members to meet specifically for the purpose of resolving professional differences in order to reach a compromise solution, and to report that solution back to the Committee.

(9) To assist the agencies in performing a scientifically sound program, the Committee shall appoint an independent Scientific Advisory Group to review and comment on study methods and plans prepared by the Team. The number and composition of the Scientific Advisory Group is at the discretion of the Committee and may vary from time to time.

(10) The Committee may also resolve interagency disputes by seeking the advice of their governing bodies.

(h) NON-BINDING CLAUSE. Nothing in this agreement shall preclude any of the agencies from executing interagency contracts, operating agreements, establishing other committees, or

otherwise utilizing available resources to achieve specific statutorily assigned responsibilities regarding instream flow studies not related to Section 16.059 of the Texas Water Code.

(i) ENTIRE CONTRACT. The agencies agree that this Memorandum of Agreement contains all the agreements with regard to the contents and that no oral agreements shall be recognized or shall in any way modify this Agreement. This Agreement may be modified only by agreement signed by parties to this Agreement.

(j) EFFECTIVE DATE. This Memorandum of Agreement shall be effective when signed by all of the agencies and shall terminate 30 days from the date of written notice of intent to cancel this agreement by any of the agencies.

(k) IN WITNESS WHEREOF the agencies have caused this Agreement to be executed in triplicate originals, each of which shall constitute an original document.

(l) Dated October 17, 2002.

§354.11. Memorandum of Agreement Between the General Land Office and the Texas Water Development Board

(a) WHEREAS, the 73rd Texas Legislature established the Texas Coastal Ocean Observation Network (TCOON) as a cooperative project of Texas A&M University-Corpus Christi (TAMU), Lamar University, the Texas Water Development Board (TWDB), and the Texas General Land Office (GLO) to collect data on natural processes affecting the Texas coast for the purpose of studying, planning for, and managing human uses of the coast as affected by natural processes; and

(b) WHEREAS, the participating state entities have been authorized to coordinate the operation of the TCOON with the National Oceanic and Atmospheric Administration (NOAA), other appropriate federal entities, and private entities; and

(c) WHEREAS, the National Ocean Service (NOS), a division of NOAA, has established "NATIONAL STANDARDS AND PROCEDURES" for the measurement of sea levels and tidal datums; and

(d) WHEREAS, the GLO has entered into an agreement with TAMU for the operation and maintenance of the equipment and for data collection; and

(e) WHEREAS, the TWDB and the GLO desire to ensure TCOON compliance with NOS standards and procedures in order to provide an accurate determination of tidal datums, boundaries of coastal public land, and sea level fluctuations along the Texas coast;

(f) NOW THEREFORE in consideration of the benefits to the State of Texas, the parties hereby agree as follows:

(1) The parties will jointly coordinate all aspects of the installation and operation of the TCOON,

including coastal site selections and technical operating procedures, in order to ensure the accuracy of the collected data.

(2) This Memorandum of Agreement shall be effective September 1, 2005, and shall remain in effect unless terminated by either party upon thirty (30) days' written notice.

(g) The GLO certifies that it has the authority to enter into this Memorandum of Agreement by virtue of the authority granted in Section 31.051, TEX. NAT. RES. CODE and Chapter 771, TEX. GOV'T CODE.

(h) The TWDB certifies that it has the authority to enter into this Memorandum of Agreement by virtue of the authority granted in Section 6.190, TEX. WATER CODE and Chapter 771, TEX. GOV'T CODE.

(i) Dated September 28, 2005

§354.12. Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality Regarding Groundwater Conservation District Management Plan Approval and Enforcement.

(a) This memorandum of agreement (MOA) between the Texas Water Development Board (TWDB) and Texas Commission on Environmental Quality (TCEQ) which sets forth the coordination of program responsibilities related to groundwater conservation district management, planning, approval, review, and oversight. This MOA is intended to clarify and outline the necessary coordination required for the agencies to document their respective duties, responsibilities, and functions as provided under Chapter 36 of the Texas Water Code.

(b) Definitions.

(1) Approval. The approval of a groundwater conservation district's adopted management plan as administratively complete by the Executive Administrator of the TWDB as required under §36.1072 of the Texas Water Code.

(2) Enforcement actions. Formal commission actions to achieve groundwater management by a groundwater conservation district as identified under §36.303 through §36.308 of the Texas Water Code including:

(A) issuing an order requiring the district to take certain actions or refrain from taking certain actions;

(B) dissolving the district's board of directors in accordance with §§36.305 and 36.307 of the Texas Water Code;

(C) requesting the Attorney General to bring suit for the appointment of a receiver to collect assets and carry on the business of the district; or

(D) dissolving the district in accordance with §§36.304, 36.305, and 36.308 of the Texas Water Code.

(3) Executive Administrator. The Executive Administrator of the TWDB or a designated representative.

(4) Executive Director. The Executive Director of the TCEQ or a designated representative.

(5) Executive Director's Preliminary Report or EDPR. A pleading filed by the Executive Director which, when issued and served under this title, seeks an enforcement order against a respondent. EDPR is further defined in 30 TAC Chapter 70, Subchapter C (relating to Enforcement Referrals to the State Office of Administrative Hearings).

(6) Groundwater conservation district (or district). Any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(7) Management Plan. The comprehensive plan developed and adopted by the groundwater conservation district under §36.1071 of the Texas Water Code and subject to approval by the Executive Administrator of the TWDB under §36.1072 of the Texas Water Code that addresses groundwater management goals, performance standards, and objectives which specifies actions, procedures, performance, and avoidance that are or may be necessary to effect the plan.

(c) Interrelated Responsibilities and Jurisdictions of the TCEQ and TWDB.

(1) The TCEQ. The TCEQ has exclusive jurisdiction over the creation of groundwater conservation districts pursuant to §36.011 of the Texas Water Code, for maintaining records of groundwater conservation district confirmation election results under §36.017(e) of the Texas Water Code, for maintaining records of groundwater conservation district directors registered with the TCEQ pursuant to §36.054(e) of the Texas Water Code, and has a right of supervision over groundwater conservation districts pursuant to §12.081 of the Texas Water Code.

(A) The TCEQ is responsible for taking certain enforcement action under §36.303 of the Texas Water Code if a groundwater conservation district board of directors fails to submit a management plan, fails to receive approval of its management plan under §36.1072 of the Texas Water Code, or fails to submit or receive approval of an amendment to the management plan under §36.1073 of the Texas Water Code. The TCEQ may not take enforcement action against a district under §36.303 of the Texas Water Code until either:

(i) the board of directors of a district has failed to submit a management plan or amendment of its plan by the required date;

(ii) the board of directors of a district has failed to submit a revised management plan (or subsequent amendment of a management plan) within 180 days of receiving notice from the executive administrator that the management plan (or subsequent amendment of a management plan) has not been approved and the district has not appealed the executive administrator's

decision to the TWDB;

(iii) the date the TWDB has taken final action withholding approval of a management plan (or a subsequent amendment of a management plan) if the district has appealed the Executive Administrator's decision to the TWDB; or

(iv) a district court in Travis County has taken final action withholding approval of a management plan (or a subsequent amendment of a management plan) if the district has appealed the TWDB's decision to a court.

(B) The TCEQ is responsible for taking certain enforcement actions under §36.303 of the Texas Water Code if a petition requesting an inquiry related to groundwater conservation district planning or management in a groundwater management area is not dismissed and the TCEQ appointed review panel has prepared and submitted a written report detailing findings and recommended actions.

(C) The TCEQ is responsible for taking certain enforcement action under §36.303 of the Texas Water Code if it is determined by the SAO under §36.302 of the Texas Water Code that a groundwater conservation district is not actively engaged in achieving the objectives of the district's management plan based on an audit of the district's performance under the plan.

(D) The TCEQ is responsible for investigation of the facts and circumstances of any violations of any rule or order of the commission, consistent with agency authority under §12.081 of the Texas Water Code. The Executive Director must prepare and file a written report with the commission and the subject district which documents the findings of the investigation and includes any recommended enforcement actions the Executive Director believes the commission should take under §36.303 of the Texas Water Code.

(E) An enforcement order approved by the commission may require the district to take certain action, refrain the district from taking certain actions, dissolve the district's board of directors, request the Attorney General to bring suit for the appointment of a receiver to collect assets and carry on the business of the district, or dissolve the district, as identified under §36.303(a) of the Texas Water Code.

(2) The TWDB. Under §36.1072(c) of the Texas Water Code, the Executive Administrator of the TWDB is responsible for approving groundwater conservation district management plans within 60 days of receipt if the plans are administratively complete. Under §36.1072(c) of the Texas Water Code, if the Executive Administrator does not approve a management plan, the Executive Administrator must provide to the district, in writing, the reasons for the action. Within 180 days after the date of receipt of notice, the district may submit a revised management plan for review and approval. As identified under §36.1072 of the Texas Water Code, the Executive Administrator's decision may be appealed to the TWDB; the decision of the TWDB may also be appealed to a district court in Travis County. TWDB rules in Chapter 356 of Title 31 of the Texas Administrative Code more fully set out these procedures.

(d) Agreed activities of each party to this MOA. For the mutual benefit of the parties to this

MOA and to provide for a consistent regulatory framework, the parties agree to cooperate in function and service to the following:

(1) The Executive Director of the TCEQ will provide written notice to the Executive Administrator of the TWDB when a new groundwater conservation district is created or confirmed by voter election and the district's temporary board of directors has fulfilled its statutory obligation and made such information available to the TCEQ. Also, notice of the following information will be provided to the TWDB within 15 days of receipt of required notifications from the district:

(A) the name, location, and enabling action for the newly created district;

(B) the date of statutory creation or the date of creation confirmation election, if an election is required; and

(C) the name of all directors, mailing address(es), and term expiration dates for directors of the new district.

(2) The Executive Administrator of the TWDB will provide written notice to the Executive Director of the TCEQ within 15 days, when the Executive Administrator:

(A) has not received a groundwater conservation district management plan by the required deadline for submission from a district;

(B) receives a groundwater conservation district management plan for administrative completeness review;

(C) approves a groundwater conservation district management plan as administratively complete;

(D) denies approval of a submitted groundwater conservation district management plan;

(E) receives a revised version of a groundwater conservation district management plan within the 180-day response period;

(F) fails to receive a revised version of a groundwater conservation district manage1nent plan at the expiration of the 180-day response period;

(G) receives documentation that a district has appealed the Executive Administrator's management plan approval decision to the TWDB, or a district has appealed TWDB's final decision to a district court in Travis County; or

(H) receives notice that final action by the TWDB or a district court in Travis County has been completed.

(3) The Executive Director of the TCEQ will provide written notice to the Executive Administrator of the TWDB when non-compliance review and oversight actions are taken

against a groundwater conservation district. The Executive Director will provide notice when:

(A) initial notification-of-violation to a non-compliant district is issued;

(B) favorable actions are taken by a district and the district has voluntarily come into compliance;

(C) formal enforcement action has been initiated;

(D) the Executive Director's Preliminary Report is filed with the TCEQ's Chief Clerk;

(E) final enforcement action has been taken by the commission; and

(F) required follow-up investigative activities are taken by the TCEQ in accordance with §36.306 of the Texas Water Code.

(4) Either party to this MOA can substitute the individual notifications identified in paragraphs (1) - (3) of this subsection with monthly notices to the other parties of all actions taken in the previous thirty (30) days. These notices may be transmitted as up-to-date and accurate reports from a database maintained by the party.

(5) Both parties agree to:

(A) meet as needed to coordinate and maintain an efficient district performance review process;

(B) allow interagency access and review of applicable files relating to processing of a management plan by the TWDB, processing of an enforcement action by the TCEQ, or related file information pertaining to the responsibilities of the agencies;

(C) share any groundwater conservation district financial reports that may have been voluntarily submitted to an agency;

(D) provide full disclosure of related activities in the biennial legislative report required under §35.018 of the Texas Water Code; and

(E) identify the agency contact person and mailing address for the formal communications specified by this MOA, along with periodic update of the contact information, as necessary.

(e) General conditions.

(1) Term of MOA. The term of this MOA shall be from the effective date until termination or amendment of this MOA.

(2) Effective date. This MOA, and any subsequent amendment, shall become effective immediately after the date on which the TCEQ Executive Director and the TWDB Executive Administrator sign the document, which ever date is later.

(3) Amendment of MOA. This MOA may be amended by mutual agreement of the two parties in accordance with applicable law. Any amendment of this MOA will become effective immediately after the date on which the TCEQ Executive Director and the TWDB Executive Administrator sign the amended document, which ever date is later.

(4) Termination of MOA. This MOA may be terminated by either party upon thirty days written notice. The termination of this MOA will become effective thirty days after notice is received by the other party.

(5) Authority. By signing this MOA, the signatories acknowledge that they are acting upon proper authority from their governing bodies.

(6) Notices. Any notices required by this MOA to be in writing shall be addressed to the respective party as follows:

(A) Executive Director, Texas Commission on Environmental Quality, Attn: Todd Chenoweth, P. O. Box, 13087, Austin, TX 78711-3231;

(B) Executive Administrator, Texas Water Development Board, Attn: Bill Mullican, P.O. Box 13231, Austin, TX 78711-3231; and

(C) The identified contact person may be revised as necessary, in accordance with provision (d)(5)(E) of this MOA.

(f) Dated September 17, 2007.

§354.13. Memorandum of Agreement Between the Texas Board of Professional Geoscientists (TBPG) and the Texas Water Development Board (TWDB) Regarding Professional Geoscience.

(a) Purpose. The purpose of this Memorandum of Agreement (MOA) is to coordinate the respective responsibilities and duties of TBPG and TWDB in the regulation of professional geoscience in accordance with the Texas Occupations Code, Chapter 1002 (the Texas Geoscience Practice Act or TGPA). Senate Bill (SB) 138, which was passed by the 83rd Texas Legislature and signed by Governor Rick Perry, amended the TGPA. The legislation, which became effective September 1, 2013, requires the TBPG to identify relevant state agencies and educate the identified agencies' staff on how to file a complaint with the TBPG and how the TBPG resolves a complaint. Under the provisions of SB 138, a state agency that becomes aware of a potential violation of the TGPA or rules of the TBPG is required to forward the information to the TBPG.

The intent of this MOA is to implement SB 138 and otherwise to protect the public from adverse environmental impacts that could result from the improper public practice of geoscience associated with activities regulated by the TWDB.

(b) Definitions. The words and terms used in this MOA shall have the same meaning as defined in the Texas Geoscience Practice Act and associated rules passed by the TBPG at Title 22, Part

39, Chapter 850 and Chapter 851 of the Texas Administrative Code unless the context clearly indicates otherwise.

(c) General Jurisdiction.

(1) TWDB jurisdiction. The TWDB is the state agency with primary responsibility for water planning and administering water financing for the state as per Section 6.06, Texas Water Code.

(2) The TBPG is the state agency with regulatory jurisdiction over the public practice of professional geoscience authorized by the TGPA. The TBPG licenses Professional Geoscientists, registers Geoscience Firms, and certifies Geoscientists-in-Training. The TBPG's mission is to protect public health, safety, welfare and the state's natural resources by ensuring that only qualified persons carry out the public practice of geoscience and enforcing the Code of Professional Conduct the Board has established for its licensees. TBPG has the authority to adopt and enforce rules consistent with TGPA relating to Geoscientists, and necessary for the performance of its duties. These TBPG rules are identified in Title 22, Part 39, Chapter 850 and Chapter 851 of the Texas Administrative Code (TAC).

(3) The TWDB is an agency identified by the TBPG under the Texas Geoscience Practice Act, Section 1002.206

(d) Coordination of Activities. The TBPG and the TWDB agree to coordinate with each other in the following activities:

(1) The TBPG agrees to educate TWDB employees regarding the procedures by which complaints are filed with and resolved by the TBPG.

(2) The TWDB agrees to consult with the TBPG on issues that involve the public practice of professional geoscience in connection with activities under the jurisdiction or review of the TWDB.

(3) The TBPG agrees to consult with the TWDB on issues that involve the TWDB in connection with activities under the jurisdiction or review of the TBPG.

(4) The TBPG and the TWDB agree to designate a liaison or representative to facilitate communication and coordination between the TWDB and the TBPG.

(5) The TBPG and the TWDB agree to have agency representatives meet bi-annually, or as needed, to encourage increased communication between the agencies and discuss possible changes to this MOA as needed.

(e) Coordination of Complaints/Coordination of Information.

(1) Upon the identification by the TWDB of a potential violation of the TGPA or a rule adopted by the TBPG, the TWDB agrees to forward any information related to the potential violation and any subsequently obtained information to the TBPG.

(2) As provided in Texas Administrative Code §851.57, the TWDB will forward information relating to a potential violation to the TBPG by filing a formal com plaint or providing information to TBPG on a prescribed form. The TWDB is responsible for informing the TBPG of any confidentiality provisions that apply to information and documents it forwards to the TBPG.

(3) The TBPG is responsible for taking appropriate actions, including consulting with TWDB as needed to ensure any applicable confidentiality provisions are maintained.

(4) Upon the identification by the TBPG of a potential issue of concern to TWDB, the TBPG agrees to forward any information related to the potential concern to the TWDB.

(5) When deemed appropriate by both agencies, the TWDB and the TBPG may cooperate on enforcement actions. Each agency shall retain the authority to undertake separate enforcement or legal actions.

(f) Miscellaneous.

(1) Nothing in this MOA shall be construed to reduce the statutory jurisdiction of either agency.

(2) Agency representatives shall meet bi-annually, or as needed, to discuss coordination of complaints under paragraph (c) of this MOA, to discuss possible changes in this MOA, to encourage increased communication between the agencies, and to increase public protection through effective use of the public protection mechanism of professional geoscience licensure and regulation.

(3) If any provision of this MOA is held to be invalid, the remaining provisions shall not be affected thereby.

(g) This MOA will take effect upon approval by both agency Executive Directors. This MOA will remain in effect until rescinded by either agency by board or commission action taken in accordance with the terminating agency's procedures.

Dated: June 13, 2014

§354.14. Agreement for Right of Entry and Temporary Use of Highway Right of Way.

(a) THIS AGREEMENT IS MADE by and between the Texas Department of Transportation, hereinafter referred to as "TxDOT," and the Texas Water Development Board, hereinafter referred to as "TWDB."

(b) WHEREAS, pursuant to its authority under Texas Water Code §6.107, TWDB finds it necessary to enter certain public property under the control and jurisdiction of TxDOT to monitor water wells; and

(c) WHEREAS, Chapter 203 of the Texas Transportation Code empowers the Texas

Transportation Commission and TxDOT to lay out, construct, maintain, and operate the state highway system; and

(d) WHEREAS, TxDOT has determined that such entry is in the public interest and will not damage the highway facility, impair safety, impede maintenance, or in any way restrict the operation of the highway facility.

(e) NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as set forth, it is hereby agreed as follows:

(f) AGREEMENT.

(1) Article 1. Notice to TxDOT.

(A) Not later than five working days before entry to the site is needed, TWDB shall notify the District Engineer of TxDOT's Waco District in writing or via email. Entry onto certain portions of the right of way of controlled access facilities requires prior approval from the Federal Highway Administration. In the event that TWDB requires entry onto that portion of the right of way to which access is controlled, the TWDB shall notify TxDOT at least fifteen working days in advance to allow time to obtain the necessary FHWA approval.

(B) The District Engineer will determine whether any construction or maintenance activities have been scheduled that might affect the site investigation, or if any special conditions exist that might otherwise impact the investigation.

(C) Right of entry shall be limited to site investigations associated with installation and maintenance of an automatic water-level recorder.

(2) Article 2. Site Investigation.

(A) At all times when on TxDOT right of way, TWDB staff, its contractors, and their respective employees, agents, and representatives shall wear protective clothing including but not limited to protective head gear such as hard hats, protective footwear such as steel-toed shoes, and reflective vests visible to the traveling public.

(B) All site investigations shall be conducted in accordance with all applicable federal and state laws, regulations, and policies.

(C) Pursuant to §203.031 of the Transportation Code, entry onto the right of way of any controlled access facility shall be allowed only from the outer edge of the right of way by way of frontage roads, nearby or adjacent public roads or streets, or trails along or near the highway right of way that connect to an intersecting road.

(D) TWDB shall notify the District Engineer at least 16 working hours in advance before performing any task that will result in disturbing the pavement.

(E) TWDB shall notify the District Engineer at least 16 working hours in advance before installing any equipment, structure, or other object intended to remain in place for more than 48 hours.

(F) TWDB shall notify the District Engineer at least 16 working hours in advance before closing one or more traffic lanes or otherwise interfering with the flow of traffic in any way. All such lane closures or traffic interference shall comply with the traffic control plan approved by TxDOT and attached to this Agreement as Exhibit "A." TWDB shall install the traffic control devices, and all traffic control shall comply with the Texas Manual on Uniform Traffic Control Devices.

(G) If during the site investigation TxDOT must perform or authorize a contractor to perform routine or special maintenance, TWDB will cooperate with TxDOT maintenance requirements.

(H) The District Engineer and the TWDB contractor are authorized to communicate directly with one another to coordinate, clarify, or otherwise discuss site investigation activities.

(I) If it becomes necessary for TWDB to curtail the investigation because of damages due to flooding, accident, or other catastrophic event, TWDB shall not resume investigation until notified by TxDOT to do so. TxDOT will proceed in a timely manner with any repair of damage caused by the above events.

(3) Article 3. Concluding the Investigation.

(A) TWDB shall notify the District Engineer when investigation activities have been completed. If one or more monitoring wells are installed, the requirements of this agreement shall survive the conclusion of initial activities.

(B) TWDB shall restore the right of way to its original condition at the conclusion of the investigation. TxDOT will inspect the right of way after any such restoration and determine that the original condition has been restored. If the right of way is found not to have been restored to its original condition, TxDOT will repair the damage at TWDB's expense.

(4) Article 4. General Terms and Conditions.

(A) TxDOT's authorization to allow TWDB a right of entry onto the site identified in this Agreement does not in any way impair or relinquish TxDOT's right to use such land for right of way purposes when it is required for construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the land for other than highway purposes under this agreement ever be construed as abandonment of the land by TxDOT.

(B) TxDOT will notify TWDB of any utility installations owned by third parties known to be located on the right of way. TWDB shall provide adequate notice of the investigation to all utility owners identified by either TxDOT or TWDB who are potentially impacted by the investigation.

(C) Each party reserves the right to terminate this agreement at any time after notifying the other party in writing at least thirty (30) days in advance of the intended termination and establishing the conditions of termination.

(g) IN WITNESSWHEREOF, TxDOT and TWDB have executed duplicate counterparts to effectuate this agreement.

(h) Dated March 31, 2005.

(i) Attached graphic.

§354.15. Agreement in Furtherance of Transparency Initiative.

(a) Please allow this correspondence to memorialize our agreement regarding the sharing of information between the Texas Water Development Board ("TWDB") and the Texas Comptroller of Public Accounts, as follows:

(1) Upon request, the TWDB shall provide the Texas Comptroller of Public Accounts with access to information reflecting only the TWDB's debt and/or financial liabilities. Such information will be provided "as is," and shall be used solely for purposes authorized by law.

(2) The TWDB and the Texas Comptroller of Public Accounts understand and agree that, while the information provided by the TWDB shall be considered public information, our respective agencies shall nonetheless comply with all state and federal laws governing confidentiality, privacy and the security of such information, including but not limited to the Public Information Act, TEX. GOV'T CODE ANN. §552.001, et seq., and Open Meetings Act, TEX. GOV'T CODE ANN. §551.001, et seq.

(3) Any costs associated with the exchange of data between the TWDB and the Texas Comptroller of Public Accounts shall be paid by the agency incurring the cost or expense, and no funds appropriated to our respective agencies will be exchanged.

(4) Finally, any debt information conveyed by the TWDB and as described in this correspondence shall be provided in the manner and format proscribed by Securities and Exchange Commission (SEC) Rule 15c2-12.

(b) If the Texas Comptroller of Public Accounts is amenable to the terms of this agreement as set forth herein, please sign and date this letter where indicated below, and return a copy to me at your earliest convenience. We appreciate your attention to this matter, and look forward to working with you to increase transparency in government on behalf of all citizens of the State of Texas.

(g) Dated April 4, 2014.

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code (TAC) §§354.2 and 354.5, as published in the August 26, 2016 issue of the *Texas Register* (41 TexReg 6394).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal of §354.2, relating to financing and construction of an international wastewater treatment facility in Nuevo Laredo, Tamaulipas, Mexico, because the Memorandum of Understanding (MOU) between the TWDB and the International Boundary and Water Commission has expired by its own terms.

The TWDB adopts the repeal of §354.5, relating to coordinated reviews between the TWDB and the Texas Commission on Environmental Quality (TCEQ), because the Letter of Agreement (LOA) has been superseded.

SECTION BY SECTION DISCUSSION OF THE ADOPTED REPEALS.

Section 354.2 is repealed due to fulfillment of the conditions of the MOU. By its terms, the MOU was to be in effect for five years after the last units of the wastewater treatment facility began operations. The Nuevo Laredo International Wastewater Treatment Plant began operations in 1996, and the final phase was completed in January 2000.

Section 354.5 is repealed because it has been superseded. Since September 21, 1992, the TWDB and the TCEQ have coordinated the reviews related to the design criteria for public water systems and wastewater facility construction. A new LOA reflecting the current interaction between the TWDB and the TCEQ during the coordinated review of water supply projects seeking financing from the TWDB has been executed and is adopted elsewhere in this issue of the *Texas Register*.

REGULATORY ANALYSIS.

The Board reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the repeals are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to remove an MOU that has been fulfilled and an LOA that has been superseded.

Even if the adopted repeals were major environmental rules, Texas Government Code, §2001.0225 still would not apply to these repeals because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3)

exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These repeals do not meet any of these four applicability criteria because they: 1) do not exceed the Federal Water Pollution Control Act or any other federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) are not adopted solely under the general powers of the agency, but rather are also adopted under authority of Texas Water Code §§6.101 and 6.104. Therefore, these adopted repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The Board evaluated these adopted repeals and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these repeals is to remove a Memorandum of Understanding that has been fulfilled and has expired by its own terns and a Letter of Agreement that has been superseded.

The Board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the Board further evaluated the adopted repeals and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed repeals do not affect a landowner's rights in private real property because they do not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted repeals do not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT.

No comments were received.

STATUTORY AUTHORITY.

These repeals are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules, and Texas Water Code §6.104, which requires the board to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

The adopted repeals affect Texas Water Code §6.104.

<rule>

§354.2. Memorandum of Understanding Between the Texas Water Development Board and the International Boundary & Water Commission.

§354.5. Letter of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.