

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** January 18, 2024

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
As to certain fiscal elements: Rebecca Trevino, Chief Financial Officer

**FROM:** Carla G. Guthrie, Ph.D., Director, Surface Water  
John T. Dupnik, P.G., Deputy Executive Administrator, Water Science  
and Conservation

**SUBJECT:** Basin boundaries rule amendments

### **ACTION REQUESTED**

Consider authorizing publication of proposed amendments to 31 Texas Administrative Code (TAC) Chapter 360, relating to the designation of river and coastal basins.

### **BACKGROUND**

Prior to the passage of Senate Bill 1 (1997), the Texas Water Code required the state water plan to define and designate river basins and watersheds as separate units for the purpose of water development and interbasin transfers. However, Senate Bill 1 amended the Water Code to require that the TWDB designate river basins and watersheds by rule. In November 1998, the TWDB adopted 31 TAC Chapter 360 relating to the designation of river and coastal basins, in accordance with the requirement of Texas Water Code Section 16.051(c). The adopted rules largely maintained the historical designations—that of 15 major river basins and 8 coastal watersheds—which were already in use and which also had become the standard for water rights permitting actions. At the time of adoption, the basin boundaries were designated as lines delineated on U.S. Geological Survey quadrangle “quad” maps which had been digitized and stored on CD-ROMs. As such, the existing rules reference the use of CD-ROMs. However, these digital files are now stored via other electronic means, with archival paper copies maintained by the Texas Geographic Information Office.

**KEY ISSUES**

The purpose of the proposed amendments to 31 TAC Chapter 360 is to modernize the rule language and to remove outdated references to the manner in which the TWDB stores digital files of the maps designating the state's river and coastal basins. It is anticipated that the proposed amendments will be published in the February 2, 2024, edition of the Texas Register, opening a 30-day comment period.

A summary of the key changes proposed for 31 TAC Chapter 360 include:

1. Clarification is provided for Sections 360.1 and 360.2 to modernize the rule language for better understanding of the rule's effect.
2. Clarification is provided for Section 360.3 so that the rule language reflects how the TWDB stores digital files of the state's designated river and coastal basins, specifically that we no longer store such files on CD-ROM.
3. There are no proposed changes to the digital images that display the basin boundaries or to the boundaries themselves.

**RECOMMENDATION**

The Executive Administrator recommends the publication of proposed amendments to 31 Texas Administrative Code Chapter 360, relating to the designation of river and coastal basins.

Attachment:

Proposed rulemaking to be filed with the *Texas Register*

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §360.1, §360.2, and §360.3.

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Chapter 360 contains the agency's rules related to the designation of river and coastal basins in accordance with the requirement of Texas Water Code Section 16.051(c). The TWDB proposes to amend the rules to modernize the rule language and reflect the new manner in which the TWDB stores the digital files of the maps of that designate the state's river and coastal basins.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

In §360.1, the section is proposed to be amended to modernize the rule language.

In §360.2, the section is proposed to be amended to modernize the rule language.

In §360.3, the section is proposed to be amended to update how the TWDB stores the digital files of the state's designated river and coastal basins. The section is proposed to be amended to remove references to the storage of a "quad map" on a CD-ROM, because CD-ROMs are no longer the medium the TWDB uses to store digital files. The proposed amendments to this section do not change any of the state's designations of its river and coastal basins.

Additionally, in §360.3, subsections (a) through (w) contain figures that are not proposed to be amended in this rulemaking and will not be republished with the rule.

## FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration, nor is there any expected reduction in costs to either state or local governments. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. There are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

## PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the amendment reflects how the TWDB stores the digital files designating state's coastal and river basins and modernizes the rule language for the public's understanding of the rule's effect. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements do not impose an economic cost on persons required to comply with the rule.

## ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

## DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed 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 it does 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 the proposed rulemaking is to modernize the rule language and to update how the TWDB stores the digital files of the designations of the state's coastal and river basins.

Even if the proposed rule were a major environmental rule, 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 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 proposed solely under the general powers of the agency, but rather the specific statutory authorization for this specific rulemaking is authorized by Texas Water Code §16.051(c). Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this proposed amendment is to update how the TWDB stores the digital files of the designations of the state's coastal and river basins and modernize the rule language.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation under state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency charged with designating the state's coastal and river basins in accordance with Chapter 16, Texas Water Code.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, 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. In other words, this proposed rule is merely an amendment to reflect how the TWDB stores the digital files of the designations of the state's coastal and river basins and modernize the rule language. It does not require regulatory compliance with any persons or political subdivisions. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5)

create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include "Chapter 360" in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §16.051(c).

This rulemaking affects Water Code, §16.051(c).

#### *§360.1 Scope of Chapter*

This chapter serves [shall serve] as the board's designation [delineation] of river basins and coastal basins pursuant to the requirement of the Texas Water Code, §16.051(c).

#### *§360.2 Definitions of Terms*

The following words and terms, when used in this chapter, have [shall have] the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code, Chapter 16 and not defined here have [shall have] the meanings provided in Chapter 16. Quad map--Official 1 to 24,000 foot maps produced by the United States Geological Survey on which river basin and coastal basin boundaries are delineated.

#### *§360.3 Designation of River Basins and Coastal Basins*

(a) The Canadian River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(a) (no change)

(b) The Red River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(b) (no change)

(c) The Sulphur River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(c) (no change)

(d) The Cypress Creek basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(d) (no change)

(e) The Sabine River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(e) (no change)

(f) The Neches River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(f) (no change)

(g) The Neches-Trinity coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3 (g) (no change)

(h) The Trinity River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(h) (no change)

(i) The Trinity-San Jacinto coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(i) (no change)

(j) The San Jacinto River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(j) (no change)

(k) The San Jacinto-Brazos coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(k) (no change)

(l) The Brazos River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(l) (no change)

(m) The Brazos-Colorado coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(m) (no change)

(n) The Colorado River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(n) (no change)

(o) The Colorado-Lavaca coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(o) (no change)

(p) The Lavaca River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.



Figure: 31 TAC §360.3(p) (no change)

(q) The Lavaca-Guadalupe coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(q) (no change)

(r) The Guadalupe River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(r) (no change)

(s) The San Antonio River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(s) (no change)

(t) The San Antonio-Nueces coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(t) (no change)

(u) The Nueces River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(u) (no change)

(v) The Nueces-Rio Grande coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(v) (no change)

(w) The Rio Grande River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [on CD-Rom of these quad maps] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC §360.3(w) (no change)