

Waivers of Project Funding
Requirement for Consistency
with State & Regional Water
Plans

Item A.6

Board Policy No. 2013-006



TEXAS WATER DEVELOPMENT BOARD



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TO: Board Members

THROUGH: Carolyn L. Brittin, Deputy Executive Administrator
Water Resources Planning and Information

FROM: Dan Hardin, Director, Water Resources Planning

DATE: May 12, 2010

SUBJECT: Consider Adoption of a Policy Authorizing the Board to Consider Waivers of the Project Funding Requirement for Consistency Under Texas Water Code Section 16.053(j) for all Projects that are Recommended Water Management Strategies in the 2011 Initially Prepared Plans or Finally Adopted 2011 Regional Water Plans

ACTION REQUESTED

Staff recommends that the Texas Water Development Board (TWDB) adopt a policy that allows waivers of the statutory requirement for funding projects (Texas Water Code Section 16.053(j)), for projects that are recommended water management strategies to meet a need in Initially Prepared Regional Water Plans (draft), or adopted 2011 Regional Water Plans, prior to final adoption of the appropriate 2011 Regional Water Plans and the 2012 State Water Plan.

BACKGROUND

The Water Infrastructure Fund (WIF) was established in Senate Bill 2, 77th Texas Legislature, to provide affordable financing for water conservation and development projects, particularly for implementation of recommended strategies in the state water plan. House Bill 1, 80th Texas Legislature, appropriated funds to the Board to implement the WIF and rules implementing the program were adopted by the Board in December 2007. Texas Water Code Section 15.973 requires that a project is eligible for WIF only if it is a recommended water management strategy through the state and regional water planning processes under Sections 16.051 (State Water Planning) and 16.053 (Regional Water Planning). In practice, staff reviews projects requesting

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

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WIF funding to determine if the projects are contained in the currently approved regional water plan and state water plan, which at this time are the 2006 Regional Water Plans and 2007 State Water Plan. Additionally, other applications for TWDB financial assistance for water supply projects must be reviewed for 'consistency' (in general, interpreted with regard to the source of water) with the approved regional and state water plans.

Texas Water Code Section 16.053(k) provides that the Board "may waive the requirements of Subsection (j) of this section if the board determines that conditions warrant the waiver." Consistent with the process approved by the Board at their September 2005 Work Session with respect to the 2006 Regional Water Plans and 2007 State Water Plan (Attachment A), staff recommends that the Board grant waivers for projects that are recommended water management strategies in the adopted initially prepared plans or adopted 2011 Regional Water Plans to be considered eligible for WIF funding and meet the consistency requirements for funding from other programs. Continuation of this policy would avoid further need to revise 2006 Regional Water Plans and amend the 2007 State Water Plan.

RECOMMENDATION

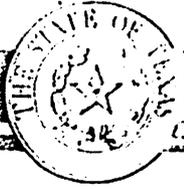
This recommendation has been reviewed by legal counsel and is in compliance with applicable statutes and Board rules.

Ken Petersen
General Counsel

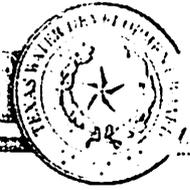
Attachment A: Memo to Board: September 13, 2005
Subject: Project Funding Requirement for Consistency with Regional and State Water Plans

ATTACHMENT A

Project Funding Requirement for Consistency with Regional and State Water Plans



TEXAS WATER DEVELOPMENT BOARD



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TO: Board Members

THROUGH: Bill Mullican, Deputy Executive Administrator, Office of Planning *BM*

FROM: Carolyn L. Brittin, Director, Water Resources Planning Division *CLB*

DATE: September 13, 2005

SUBJECT: Project Funding Requirement for Consistency with Regional and State Water Plans

ACTION REQUESTED

Briefing, discussion, and consideration of agency policy on granting a waiver of the statutory requirement that a proposed project for financing be consistent with the approved 2002 State Water Plan and applicable 2001 Regional Water Plan during the adoption period for the Regional Water Plans and the 2007 State Water Plan.

Staff recommends that the Texas Water Development Board (TWDB) adopt a policy that allows waivers of the statutory requirement for funding projects (Texas Water Code Section 16.053(j)), for projects that are recommended water management strategies to meet a need in Initially Prepared Regional Water Plans (draft), or adopted 2006 Regional Water Plans, prior to final adoption of the appropriate 2006 Regional Water Plans and the 2007 State Water Plan.

BACKGROUND

In 1997, the Texas Legislature established a new process for state water planning to include the regional water planning process. At the same time, the legislature conditioned funding for water supply projects in Texas Water Code Section 16.053(j) and (k) as follows:

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, and J, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan; and

Our Mission

It is the mission of the Texas Water Development Board to provide the state with a comprehensive water plan and to provide the state with the financial resources necessary to carry out the plan. The Board shall also provide technical assistance to political subdivisions in the development and implementation of their water plans.

STAFF

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(2) beginning January 5, 2002, the board:

- (A) has approved a regional water plan, as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and
- (B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan.

(k) The board may waive the requirements of Subsection (j) of this section if the board determines that conditions warrant the waiver.

Since January 5, 2002, the TWDB has required loan applicants to seek amendment to the appropriate 2001 Regional Water Plan, if the project they were requesting financial assistance for is not identified as a recommended water management strategy to meet a need in the subject plan. The amendment process currently requires public notice and hearing at the same level of effort as required for final adoption of the plans. The amendment process takes significant time and the cost of notice has ranged from \$4,000 to over \$10,000 for some regions. Since 2001, there has been one waiver approved by the TWDB based on unanticipated growth and incorrect identification of the groundwater source in the 2001 Region C Water Plan.

KEY ISSUES

Several Planning Groups are completing the process of amending 2001 Regional Water Plans to meet the statutory requirements (also included in Senate Bill 1 in 1997) for obtaining a water right permit from the Texas Commission of Environmental Quality (Texas Water Code Section 11.134(b)(3)(E)). One entity is seeking funding from the TWDB for a project that is recommended as part of the draft 2006 Regional Water Plan, but which is not a recommended strategy in their 2001 Regional Water Plan.

Continuation of the policy to require amendment of Regional Water Plans, prior to the formal adoption of 2006 Regional Water Plans and the 2007 State Water Plan, will require certain loan applicants to amend 5-year old regional water plans to fund projects that are already recommended in 2006 draft or adopted Regional Water Plans.

Projects that are recommended to be considered for waivers of Texas Water Code Section 16.053(j) are projects that are contained in 2006 Initially Prepared Plans or finally adopted Regional Water Plans which have undergone a full analysis and public hearing process. This recommended policy would eliminate the requirement that 2001 Regional Water Plans be amended when a Planning Group has already evaluated, considered, and recommended new strategies in the current cycle of planning.

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RECOMMENDATION

Staff recommends that the TWDB adopt a policy that allows waivers of the statutory requirement for funding projects (Texas Water Code Section 16.053(j)), for projects that are recommended water management strategies to meet a need in Initially Prepared Regional Water Plans (draft), or adopted 2006 Regional Water Plans, prior to final adoption of the appropriate 2006 Regional Water Plans and 2007 State Water Plan.

This recommendation has been reviewed by legal counsel and is in compliance with applicable statutes and Board rules

by *R.M. Pigott*

Deputy Counsel