

Texas Water Development Board

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TO: Board Members

THROUGH: Melanie Callahan
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Matt Nelson, Manager, Regional Water Planning

FROM: Temple McKinnon, Team Lead, Regional Water Planning

DATE: July 11, 2012

SUBJECT: Consider adoption of new 31 Texas Administrative Code (TAC) Chapter 355, Subchapter C relating to Regional Planning Grants; 31 TAC Chapter 357 relating to Regional Water Planning Guidelines; and 31 TAC Chapter 358, Subchapter A relating to State Water Plan Development; and the repeal of current 31 TAC Chapter 355, Subchapter C relating to Regional Planning Grants; 31 TAC Chapter 357 relating to Regional Water Planning Guidelines; and 31 TAC Chapter 358, Subchapter A relating to State Water Plan Development.

ACTION REQUESTED

The Texas Water Development Board (TWDB) staff requests the final adoption of new and repeal of current rules for regional water planning grants, regional water planning, and state water plan development.

Our Mission : Board Members

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

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BACKGROUND

On May 4, 2012, the proposed 31 TAC Chapter 355, Subchapter C; Chapter 357; and Chapter 358, Subchapter A were published in the Texas Register with a deadline to receive public comments by June 4, 2012.

By statute, the Board is required to respond to each and every comment and if necessary, modify the proposed rules. Staff has determined that several changes were warranted as a result of the public comments. The adoption preamble includes the Board's response to comments and changes in the final language considered for adoption are outlined below as key issues.

The Board received comments from the following entities: Freese and Nichols, Inc.; Lower Colorado River Authority; Lowerre, Frederick, Perales, Allmon & Rockwell; National Wildlife Federation; Sierra Club; Rolling Plains Groundwater Conservation District; and Texas Parks and Wildlife Department.

KEY ISSUES

31 TAC Chapter 355, Subchapter C:

The changes to this subchapter were minor changes made for clarification.

31 TAC Chapter 357:

The changes to this chapter include removal of definitions for:

- "conflict between a regional water plan and a groundwater management plan" as pertains to 357.10(a)(6) due to the draft definition being unclear and repetitive of statute.
- "safe yield" as pertains to 357.10(a)(24) due to the term not being used elsewhere in the rules.

Other changes were minor and made for clarification and corrections.

31 TAC Chapter 358, Subchapter A:

The changes to this subchapter were minor changes made for clarification.

Upon Board approval, the new 31 TAC Chapter 355, Subchapter C; Chapter 357, and Chapter 358, Subchapter A and the repeal of the current 31 TAC Chapter 355, Subchapter C; Chapter 357, and Chapter 358, Subchapter A will be filed with the *Texas Register*.

RECOMMENDATION

TWDB staff recommends the final adoption of new and repeal of current rules for regional water planning grants, regional water planning, and state water plan development.

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CERTIFICATION

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

Ken Petersen, General Counsel

Attachment A: Preamble for Adoption, 31 TAC Chapter 355, Subchapter C and Proposed Rule

Attachment B: Preamble for Repeal, 31 TAC Chapter 355, Subchapter C

Attachment C: Preamble for Adoption, 31 TAC Chapter 357 and Proposed Rule

Attachment D: Preamble for Repeal, 31 TAC Chapter 357

Attachment E: Preamble for Adoption, 31 TAC Chapter 358, Subchapter A and Proposed Rule

Attachment F: Preamble for Repeal, 31 TAC Chapter 358, Subchapter A

ATTACHMENT A

Preamble for Adoption, 31 TAC Chapter 355, Subchapter C and Proposed Rule

The Texas Water Development Board (TWDB) adopts Chapter 355, Subchapter C relating to Regional Water Planning grants. The proposal is adopted with changes as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3353).

355, Subchapter C repeal is 3352; 355, Subchapter C proposal is 3353; Chapter 357 repeal is 3357; Chapter 357 proposed is 3358, Chapter 358, Subchapter A repeal is 3377; Chapter 358, Subchapter A proposed is 3378.

Corrections of error were published in the May 28, 2012 issue of the Texas Register (37 TexReg 3759).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts subchapter C, chapter 355 with one change to the proposed text. The Board is adding language to <*>355.92(b)(3) to clarify that Board funding for administrative costs relating to regional water planning includes the costs of providing copies of documents and information to the public. The rule as proposed only mentioned copies for members of the regional water planning groups.

PUBLIC COMMENTS

One commenter stated that <*>355.91(e)(7) relating to notice of funds and submission of applications should be amended by adding the words “in a comprehensive manner consistent with applicable requirements” to the end of the subsection.

The comprehensive approach to regional water planning is already articulated in the statutes at 16.053 which provide significant detail identifying the many factors for consideration in planning. Funding for regional water planning is governed by Tex. Water Code section 15.4061 and the proposed rule is based on the language of section 15.4061(f)(3) which addresses the criteria for eligibility for funding. The Board declines to amend the proposed rule because regional water planning is designed to comprehensively review all uses of water including water for natural resources and for agriculture.

A commenter requested that <*>355.92(b)(3) be amended to add the words “and the public” to reflect that state water planning funds should be expended to reimburse the RWPG’s political subdivision for copies made for the public.

This comment clarifies appropriate eligible direct costs associated with the planning process. The Board will revise the language as proposed in the comment.

The Board received comments from the following entity: Sierra Club

STATUTORY AUTHORITY

The amendment is adopted under the authority of 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 Water Code §15.4061(c).

This rulemaking affects Water Code, Chapter 15, <*> 15.4061 relating to funding for regional water plans.

Chapter 355. RESEARCH AND PLANNING FUND**Subchapter C. REGIONAL WATER PLANNING GRANTS****<*>355.90. Applicability and Definitions.**

(a) This subchapter applies to grant funds for the development and revision of regional water plans.

(b) The following words and acronyms, used in this subchapter, have the following meanings:

(1) Board--The Texas Water Development Board.

(2) Commission--The Texas Commission on Environmental Quality.

(3) Eligible applicant--A political subdivision designated by the regional water planning group and authorized to receive funds for developing or revising regional water plans.

(4) Executive administrator (EA)--The executive administrator of the Board or a designated representative.

(5) Political subdivision--A city, county, district or authority created under the Texas Constitution, Article III, <*>52, or Article XVI, <*>59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(6) Regional water plan--A plan or an amendment to an adopted regional water plan developed by a regional water planning group for a regional water planning area pursuant to the Texas Water Code <*>16.053 (relating to Regional Water Plans).

(7) Regional water planning area--A geographical area designated and defined by the Board pursuant to the Texas Water Code <*>16.053.

(8) Regional water planning group (RWPG)--A group designated by the Board that develops a regional water plan, pursuant to the Texas Water Code <*>16.053.

(9) State environmental planning criteria--Criteria adopted by the Board for inclusion in the state water plan; the criteria are developed through coordination with the Commission and the Texas Parks and Wildlife Department and are used for evaluating the feasibility of water management strategies in a regional water plan when the RWPG lacks information from site specific studies. The environmental planning criteria are listed in Chapter 357 of this title (relating to Regional Water Planning) and also include the Commission's environmental flows standards at 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water).

(10) State population and demand projections--Population and water demand projections contained in the state water plan or adopted by the Board after consultation with the Commission, the Texas Department of Agriculture, the Texas Parks and Wildlife Department, and RWPGs in preparation for revision of the state water plan.

(11) State water plan--The most recent state water plan adopted by the Board under the Texas Water Code <*>16.051 (relating to State Water Plan).

<*>355.91. Notice of Funds and Submission and Review of Applications.

(a) The EA will publish notice in the *Texas Register* advising RWPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop a scope of work or to develop or revise regional water plans. The notice will describe the form and manner for applications. A RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted by-laws.

(b) The RWPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RWPG. The RWPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement and enter into the contracts necessary for regional planning.

(c) The RWPG shall provide notice that an application for funding is being submitted in accordance with <*>357.21(d) of this title (relating to Notice and Public Participation).

(d) The EA may request clarification from the RWPG if necessary to evaluate the application. Incomplete applications may be rejected and returned to the applicant. After the initial round of planning grant funds, an eligible applicant may submit additional applications for tasks not previously funded. The EA may fund additional applications under this subchapter, but is not required to provide such additional funding.

(e) The applications shall be evaluated by the following criteria:

(1) degree to which proposed planning does not duplicate previous or ongoing planning;

(2) project organization and budget;

(3) scope of work of project;

(4) eligibility of tasks for funding under this subchapter;

(5) the relative need of the political subdivision for the money based upon an assessment of the necessary scope of work and cost to develop the regional water plan as compared to statewide needs for development of all regional water plans;

(6) the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and

(7) the degree to which regional water planning by the political subdivision will address the water supply needs in the regional water planning area.

<*>355.92. Use of Funds.

(a) Limitations of Funding. The Board has sole discretion in determining which activities are necessary for the development or revision of regional water plans. However, no funds will be provided for the following:

(1) activities for which the Board determines existing information or data is sufficient for the planning effort including:

(A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;

(B) evaluations of groundwater resources for which a desired future condition has been submitted to the Board pursuant to Texas Water Code <*>36.108(d) (relating to Joint Planning in a Management Area);

(C) evaluations of groundwater resources for which current information is available from the Board or other entity sufficient for evaluation of the resource;

(D) determination of water savings resulting from standard conservation practices for which current information is available from the Board;

(E) revision of the adopted state population and demand projections;

(F) revision of state environmental planning criteria for new surface water supply projects; and

(G) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;

(4) costs associated with administration of the plan's development, including but not limited to:

(A) compensation for the time or expenses of RWPGs members' service on or for the RWPG;

(B) costs of administering the RWPGs;

(C) costs of public notice and meetings, including time and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of reviewing products developed due to this grant; and

(F) costs of administering the regional water planning grant and associated contracts; and

(5) analyses of benefits and costs of water management strategies unless the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by **<*>357.34** of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies), and the RWPG demonstrates to the satisfaction of the executive administrator that these analyses are needed to determine the selection of the water management strategy.

(b) **Funding Administrative Costs.** The following administrative costs are eligible for funding if the RWPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act, for RWPG voting members who certify that they are not eligible for reimbursement from their employer; travel expenses are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RWPGs and certified by the chairperson;

(3) direct costs, not including personnel costs, for placing public notices in newspapers for the legally required public hearings and of providing copies of information **for the public and for** members of the RWPGs as needed for the efficient performance of ~~their~~ **planning** work; and

(4) the cost of postage for mailing notices of public hearings and other actions to persons and entities listed in Chapter 357 of this title (relating to Regional Water Planning).

(c) **Subcontracting.** A RWPG through the eligible applicant's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

(d) Notwithstanding limitations on funding described in this section, the EA may, in his sole discretion, authorize funding for a cost benefit analysis of water management strategies. The EA shall consider funding such an analysis when the strategies serve the same demand, but the costs and benefits differ significantly among the strategies. The EA shall consider the overarching

benefits to the state when determining whether to provide such funding. The EA may provide cost benefit analysis in other situations, as he deems necessary and appropriate.

<*>355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract.

(a) The EA shall submit a summary of applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicant and other persons who have provided comments of the time and place of such meeting. The Board agenda is published on the Web site at www.twdb.texas.gov.

(b) Board Review. The Board has discretion to approve, disapprove, amend, or continue consideration of an application. If the Board approves the application, then the eligible applicant will be notified of the amount of funds available and about the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The applicant may request an extension of time for good cause shown prior to the contract execution deadline.

(c) Eligible Applicant's Responsibility. The eligible applicant must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.

(d) A contract for regional planning funds shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) the total amount of money to be paid from the research and planning fund under the contract;
- (3) the time for completion; and
- (4) any other terms and conditions required by the EA or agreed to by the contracting parties.

ATTACHMENT B

Preamble for Repeal, 31 TAC Chapter 355, Subchapter C

The Texas Water Development Board (TWDB) adopts the repeal of Chapter 355, Subchapter C relating to Regional Water Planning grants. The proposal is adopted without changes as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3353).

355, Subchapter C repeal is 3352; 355, Subchapter C proposal is 3353; Chapter 357 repeal is 3357; Chapter 357 proposed is 3358, Chapter 358, Subchapter A repeal is 3377; Chapter 358, Subchapter A proposed is 3378.

Corrections of error were published in the May 28, 2012 issue of the Texas Register (37 TexReg 3759).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the repeal of chapter 355, subchapter C relating to regional water planning grants. New subchapter C, chapter 355 is being adopted in today's *Texas Register*.

PUBLIC COMMENTS.

No comments were received on the proposed repeal of chapter 355, subchapter C.

STATUTORY AUTHORITY.

The amendment is adopted under the authority of 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 Water Code § 15.4061 relating to funding for regional water plans.

This rulemaking affects Water Code, Chapter 15, <*>15.4061 relating to funding for regional water plans.

ATTACHMENT C

Preamble for Adoption, 31 TAC Chapter 357 and Proposed Rule

The Texas Water Development Board (TWDB) adopts chapter 357 relating to Regional Water Planning. The proposal is adopted with changes as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3358).

355, Subchapter C repeal is 3352; 355, Subchapter C proposal is 3353; Chapter 357 repeal is 3357; Chapter 357 proposed is 3358, Chapter 358, Subchapter A repeal is 3377; Chapter 358, Subchapter A proposed is 3378.

Corrections of error were published in the May 28, 2012 issue of the Texas Register (37 TexReg 3759).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts chapter 357 with changes to the proposed rules. Changes are made to the following rules: <*> 357.10(a)(6); (a)(7), (a)(24), (a)(28), (a)(29), (a)(30) all relating to definitions; 357.11(d) relating to designations; 357.21(b)(1) relating to notice and participation; 357.22(b) relating to general considerations; 357.34(d)(3)(B) relating to identification and evaluation of potentially feasible water management strategies; 357.34(f)(2) and 357.34(f)(2)(A) through (C) relating to water conservation practices; 357.35(g)(2) relating to planning safety factors.

PUBLIC COMMENTS.

General Comments.

One commenter recommended that instead of using the words “demand” and “need” throughout the regional water plans, the Board should use “projected total demands” and “projected unmet demands.”

The Board is not making any change based on this comment. The terms ‘demand’ and ‘need’ are long established planning terms that have been consistently defined throughout the duration of the regional water planning process as well as in the state water plans dating back to 1984. Prior to 1984, the state water plans used a comparable approach to analysis, but “demand” was termed “use”. These terms are well understood by the Regional Water Planning Groups (RWPG) and by the public.

Subchapter A. General Information

A commenter recommended that the definition of conflict between a regional water plan and a groundwater management plan at <*>357.10(a)(6) is problematic because the term “groundwater availability amount” is unclear. The commenter recommended that each aquifer or group of aquifers with an established future condition should be considered separately.

The Board agrees with this comment and is deleting the definition of this type of conflict because the more salient issue is a conflict between the regional water plan and a desired future condition which is required by the groundwater management plans. Additionally, the definition as proposed was largely verbatim from the statute and did not add significant guidance to the public.

The commenter made the same comment for <*>357.10(a)(7) as described above for <*>357.10(a)(6).

The Board is making a change to <*>357.10(a)(7) based on this comment and will add language more fully describing the use of the phrase “groundwater availability.”

Two commenters stated that the definition of interregional conflict at <*>357.10(a)(16) is impermissibly narrow because it does not acknowledge the protection of agricultural or natural resources and because it is based only on an over-allocation of water and should instead reflect a variety of factors that RWPG should consider when developing the Regional Water Plan (RWP).

Interregional conflicts are defined as water use categories that rely upon the same supply to the point that there is an insufficient supply to meet all the planned uses. The Board has approved this definition of interregional conflict for each cycle of regional water planning. The regional planning process already includes consideration of environmental flows when determining supply and evaluating water management strategies. The Board is not making a change based on this comment.

A commenter suggested that the definition of “safe yield” at <*>357.10(a)(24) be deleted because it is not needed and is too broad to be meaningful.

The Board agrees with this comment particularly because the term “safe yield” is not used in these rules. Instead, the Board will place the term and its definition in guidance documents so that the concept remains as a tool for consideration by the regional water planning groups. The definition will be deleted.

A commenter pointed out that there is a typographical error in <*>>357.10(a)(28) where the word “or” should be the word “of.”

The Board appreciates the comment and will make the correction as suggested by the commenter.

A commenter recommended that <*>357.10(a)(29)'s definition of water conservation plan be changed to reference the "most current plan" and also to add a reference to Tex. Water Code <*>13.146.

The Board is making a change based on this comment to adopt a more complete definition of the term. The definition will be revised to include the phrase "most current" and a citation to <*>13.146.

A commenter recommended adding the phrase "including through reducing demands" to the definition of water management strategy in <*>357.10(a)(30).

The Board is making a change based on this comment by including, at the end of the proposed definition, the words "including through reducing demands."

A commenter recommended revising <*>357.11(d) to provide greater clarity to the last sentence by emphasizing that the RWPG can have more than one representative from each designated group.

The Board agrees that the language should be clarified and is making a change based on this comment by more clearly stating that there must be at least one member from each group and also clearly stating that if an interest group is not present in the region, then no representative from that group is required.

One commenter recommended that <*> 357.11(d)(12) relating to Designations for members of regional water planning groups should emphasize that the groundwater management area, rather than the regional water planning group is responsible for appointment of a representative to the regional water planning group.

The Board agrees with the substance of this comment but the Board submits the language is clear enough about the duty of the GMA to appoint the representative and therefore no change is made based on this comment.

One commenter suggested that <*>357.11(g), which allows additional members on a RWPG, be amended to ensure that the RWPG maintains a reasonable balance of representation among the membership.

The Board is not making a change based on this language; as long as the RWPG has the statutorily required members, the Board is providing the RWPG the discretion to add other

members, as needed, to fully represent all interest categories. The Board has no information that any RWPG has or has attempted to allow one interest group to dominate the planning process.

Subchapter B. Guidance Principles and Notice Requirements

One commenter recommended that <*> 357.21(b)(1) relating to Notice and Participation be modified to delete the requirement that Executive Committee meetings, subcommittee and subgroup meetings be posted for notice prior to the meeting. The commenter noted that meetings of less than a quorum are not required to be posted under the Texas Open Meetings Act.

The Board agrees with the commenter that the Open Meetings Act only applies where a quorum is present. The Board is making a change based on this comment by deleting the reference to executive committee, subgroup and subcommittee meetings.

A commenter recommended that an additional paragraph be added to <*>357.22 relating to general considerations for development of RWPs to emphasize the information included in the basin and bay area stakeholder committee reports and the environmental flows advisory group reports.]

The proposed rules require that RWPG utilize the environmental flow standards developed through the Basin and Bay Area Stakeholder process and Texas Commission on Environmental Quality (Commission) rulemaking. Information developed by the Stakeholder Committees and included in their reports submitted to the Commission and Environmental Flows Advisory Group constitutes local water planning studies that are permissible for consideration in the development of the regional water plans. However, the RWPG should consider the adopted rules instead of the stakeholder committee reports. The Board is not making a change based on this comment.

One commenter recommended that <*>357.22(b) be clarified regarding the number of chapters and the description of the required chapters be clarified.

The TWDB agrees that the language of <*>357.22(b) needs further clarity and therefore is making a change based on this comment.

Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations

Two commenters suggested that <*>357.30(a)(12) relating to description of the regional water planning area specifically reference threats to agricultural and natural resources arising from inadequate instream and freshwater flows.

The statute governing regional water planning, Tex. Water Code <*>16.053 identifies threats to agricultural resources and to natural resources as do the proposed rules and Board guidance for RWPG. The Board is not making a change because threats to these resources are and will continue to be analyzed in the regional plans.

Two commenters recommended adding language to <*>357.33(c) relating to needs analysis: comparison of water supplies and demands to acknowledge the incremental costs of not meeting water needs instead of using an all or nothing approach and to require a method for estimating losses associated with partially meeting water needs.

The Board's current methodology for estimating economic impacts includes an incremental factor where smaller volumes of needs are assumed to cause little or no impact. Evaluation of only partial fulfillment of needs would require detailed analysis to determine which needs were and were not met, and such refined analyses are not likely to significantly affect the overall economic impact. The Board therefore is not making a change based on this comment.

A commenter recommended the language in <*>357.34(d)(3)(B) relating to quantitative reporting of the environmental factors when identifying and evaluating potentially feasible water management strategies be clarified to expand on the meaning of the word "appropriate" in the phrase "appropriate environmental water needs."

The Board agrees that the word "appropriate" is not needed in this section and that it may create confusion. The Board is making a change based on this comment and will delete the word. The language in <*>357.34(d)(3)(B) is intended to prioritize environmental assessments in the regional water planning process based upon the most recently adopted environmental flow rules of the Commission. Where environmental flow standards have not been adopted by the Commission, RWPG shall, as in previous planning cycles, use site-specific studies where available. Where site-specific studies are not available, as in previous planning cycles, the RWPG may use the state environmental planning consensus criteria.

A commenter suggested a revision of <*>357.34(d)(3)(B) relating to the quantitative reporting of environmental factors so that the effects of environmental flows on natural resources are mentioned.

The Board agrees that a revision will clarify the language in this section and the Board is making a change based on this comment. The language will be revised to specifically note the effects on environmental flows.

One commenter recommended adding language to <*>357.34(f)(2)(A), (B), and (C) relating to water conservation practices to identify the water conservation best management practices guide and the water conservation plans in Tex. Water Code <*>13.146.

Each RWPG is responsible for determining potentially feasible water management strategies for their region. The Board prefers not to limit the RWPG by requiring that a specific document be utilized in the development of the plan. However, the Board is making a change to <*>356.34(f)(2) to reference best management practices. The Board is also making changes to <*> 357.34(f)(2)(A), (B), and (C) to add a reference to Tex. Water Code chapter 13 water conservation plans and best management practices.

A commenter suggested changing the words “planning safety factors” to “ excess water supply capacity” in <*>357.35(g)(2) relating to reporting of planning safety factors as more appropriate and to include cost information about excess capacity.

The Board agrees that use of term ‘safety’ could be misinterpreted. The Board does not agree with using the term “excess water supply capacity” because, as explicitly recognized by regional water planning groups, actual implementation of the regional water plans may, in many instances, result in less supply capacity than is recommended and so may not result in any “excess water supply capacity,” especially in the event of a drought worse than a drought of record or as a result of other uncertainties that increase demands such as greater population growth. However, the Board is making a change to the language of this section by using the words “management supply factors” instead of “planning safety factors.”

The Board disagrees that further cost information is needed in this section and is not making a change relating to cost information; such information relating to recommended water management strategies is already presented for each strategy in other portions of the regional water plans. The costs associated with any particular entity that may include water management strategies that would provide supplies greater than projected needs may not be divisible for the purpose mentioned above or may not be relevant. No changes are made based on this portion of the comment.

One commenter recommended that the regional water planning process use available quantitative estimates of future changes in hydrology when computing existing supplies as required in **<*>357.35(g)(2)** relating to recommended and alternative water management strategies.

In accordance with Tex. Water Code **<*>16.053** these regional water planning rules are based on planning for drought of record conditions, including both water demands and water supplies that are expected to occur under those conditions. These draft rules and the current regional water planning contracts and guidance allow RWPG to consider potential uncertainties in water supplies and or water demands when developing their regional water plans and to consider all hydrologic information available at the time they develop their regional water plans. The Board therefore is not making a change based on this comment.

Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation

One commenter suggested that a new paragraph be added to **<*>357.40(b)** relating to impacts of regional water plans so that the RWPG specifically address impacts to natural resources in a manner similar to addressing impacts to agricultural resources.

The Board is not making a change based on this comment because subsection (b)(3) already discusses threats to natural resources and subsection (b)(2) requires a discussion of the impacts of the plan on water resources. These references are sufficient to ensure that natural resources are considered and also protection of natural resources is listed in the Guidelines of chapter 358, **<*>358.4(b)(3)**.

Another commenter recommended that **<*>357.40(b)** requires the RWPG to discuss impacts to natural resources when evaluating the impacts of the RWP.

The Board is not making a change based on this comment because there are numerous references to natural resources throughout the rules as discussed in the response to the previous comment.

Subchapter E. Adoption, Submittal and Amendments to Regional Water Plans

One commenter stated that **<*>357.50** and **357.62** appear to allow the Board to overrule a RWPG's identification of an interregional conflict. In particular the commenter stated the **<*>357.50(j)(2)** allows the Board to determine that no conflict exists even if one is identified by a RWPG.

The Board is not making a change based on this comment because pursuant to Tex. Water Code **<*>16.053(h)** the Board itself determines whether an interregional conflict exists and does not authorize planning groups or commenters to declare a conflict. By rule, the Board asks regional

water planning groups to call the Board's attention to information on a known interregional conflict pursuant to <*>357.50(f). The Board's response to comments about the definition of "interregional conflict" at <*>357.10(a)(16) are applicable to this similar comment. The statutory scheme relating to regional water planning and interregional conflicts makes apparent that the Board decides whether an interregional conflict exists. See Tex. Water Code <*>16.053 (h)(4),(5) and (6). This definition is consistent with the language of Tex. Water Code <*>16.053 in defining "interregional conflicts" as conflicts arising between two or more defined water management strategies that are necessary to ensure a 50 year supply of water for specified uses. The Board does not consider every difference between regional water plans to be a "conflict" as contemplated by the statute. This definition focuses on resolving those conflicts that stymie full implementation of the state water plan by rendering supply strategies inadequate for two or more regions.

This definition also recognizes that the Legislature intended for the Board to address conflicts between actual water management strategies, not general objections to projects that are properly reserved for agencies other than the Board if and when permit applications for projects are filed. Such challenges could more appropriately be addressed if and when permit applications are filed. This definition also reflects the Board's long-standing interpretation of "interregional conflicts," which the Board has consistently employed in every planning cycle since Tex. Water Code <*>16.053(h) was enacted. Thus, only where there is an insufficient future supply to implement a strategy because another necessary project relies on the same supply is there a conflict that prevents full implementation of the regional and state water plans.

Subchapter F. Consistency and Conflicts in Regional Water Plans

A commenter stated that <*>357.60(b)(1) relating to consistency of regional water plans be modified to add language that states that the subsection applies only to minor modifications to an existing surface water right if the section is intended to apply only to surface water. The commenter also states that if the subsection applies to groundwater based water projects then subsection (b)'s introductory statement should include a reference to the absence of extenuating circumstances for Board approval of project funding.

The intent of the language in <*>357.60(b) is not limited to projects related to surface water rights. A provision for surface water projects is provided at 357.60(b)(2). The Board provides funding for projects sourced by surface water, groundwater, and treated effluent or reuse water. The language as proposed provides for consistency determinations for multiple sources of supply. Board reviews of project consistency evaluate over-allocation of supply as a constraint. The Board therefore is not making a change based on this comment.

A commenter stated that <*>357.62 should provide more information about what steps should be taken if a RWPG finds that there is an interregional conflict.

The Board is not making any change to this section based on this comment. The RWPG may submit information on known interregional conflicts, based on the definition of interregional conflict when submitting the initially prepared regional water plan as provided for in **357.50(f)** As discussed in the response to the comments about **357.50** and **357.62**, this comment mistakenly assumes that the RWPG make findings about interregional conflicts, when such findings are the Board's responsibility.

A commenter stated that **357.62(c)** misstates the law because it says that the Board's decision about the existence of an interregional conflict is "not appealable."

The commenter cited Tex. Water Code **6.241(a)** in support of the argument that the Board's decision is appealable. The commenter is currently in litigation with the Board over this very issue and the law regarding sovereign immunity and legislative intent on this point will be resolved by the courts. If there is a final judicial decision that contradicts the Board's proposed rule, the Board will amend the rule as necessary.

The Board received comments from the following entities: Freese and Nichols, Inc.; Lower Colorado River Authority; Lowerre, Frederick, Perales, Allmon & Rockwell; National Wildlife Federation; Rolling Plains Groundwater Conservation District; Sierra Club; and Texas Parks and Wildlife Department.

STATUTORY AUTHORITY

The amendment is adopted under the authority of 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 Water Code **16.051** and **16.053**.

This rulemaking affects Water Code, Chapter 16, **16.051** and **16.053**.

Chapter 357. REGIONAL WATER PLANNING

Subchapter A. GENERAL INFORMATION

<*>357.10. Definitions and Acronyms.

The following words, used in this chapter, have the following meanings.

- (1) Alternative water management strategy--A fully evaluated water management strategy that may be substituted into a regional water plan in the event that a recommended water management strategy is no longer recommended.
- (2) Availability--Maximum amount of water available from a source during the drought of record, regardless of whether the supply is physically or legally available to water user groups.
- (3) Board--The Texas Water Development Board.
- (4) Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common wholesale water providers, having common sources, or other appropriate associations.
- (5) Commission--The Texas Commission on Environmental Quality.
- ~~(6) Conflict between a regional water plan and a groundwater management plan--A regional water plan is in conflict with a groundwater management plan if the groundwater availability amount in the regional water plan and on which an existing water supply or recommended water management strategy relies exceeds the modeled available groundwater amount included in the groundwater management plan for the relevant aquifers in the regional water planning area. The modeled available groundwater amount must be associated with a desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.~~
- (6) Consistency between a regional water plan and a desired future condition--A regional water plan is consistent with a desired future condition if the groundwater availability amount in the regional water plan **and on which an existing water supply or recommended water management strategy relies** does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers. ~~located in the regional water planning area.~~ The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.
- (7) County-other--An aggregation of residential, commercial, and institutional water users in cities with less than 500 people or utilities that provide less than an average of 250,000 gallons per day, as well as unincorporated rural areas in a given county.

- (8) Drought contingency plan--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code <*>11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.
- (9) Drought management measures--Demand management activities to be implemented during drought that may be evaluated and included as water management strategies.
- (10) Drought of record--The period of time when natural hydrological conditions provided the least amount of water supply.
- (11) Executive administrator (EA)--The executive administrator of the Board or a designated representative.
- (12) Existing water supply--Maximum amount of water available from existing sources for use during drought of record conditions that is physically and legally available for use by a water user group.
- (13) Firm yield--Maximum water volume a reservoir can provide each year under a repeat of the drought of record using reasonable sedimentation rates and assuming that all senior water rights will be totally utilized.
- (14) Interbasin transfer of surface water--Defined and governed in Texas Water Code <*>11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.
- (15) Interregional conflict--An interregional conflict exists when more than one regional water plan relies upon the same water source, so that there is not sufficient water available to fully implement both plans and would create an over-allocation of that source.
- (16) Intraregional conflict--A conflict between two identified, quantified, and recommended water management strategies in the same adopted regional water plan that rely upon the same water source, so that there is not sufficient water available to fully implement both water management strategies and thereby creating an over-allocation of that source.
- (17) Initially Prepared Plan (IPP)--Draft regional water plans that are presented at a public hearing in accordance with <*>357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.
- (18) Political subdivision--City, county, district, or authority created under the Texas Constitution, Article III, <*>52, or Article XVI, <*>59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating **under** Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(19) Regional water plan (RWP)--The plan adopted or amended by a regional water planning group pursuant to Texas Water Code <*>16.053 (relating to Regional Water Plans) and this chapter.

(20) Regional water planning area (RWPA)--Area designated pursuant to Texas Water Code <*>16.053.

(21) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code <*>16.053.

(22) Retail public utility--Defined in Texas Water Code <*>13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

~~(24) Safe yield--The annual amount of firm water that can be withdrawn from a reservoir such that a reserve exists for conditions more severe than the drought of record.~~

(23) State Drought Preparedness Plan--A plan, separate from the state water plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code <*>16.0551 (relating to State Drought Preparedness Plan).

(24) State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code <*>16.055 (relating to Drought Response Plan).

(25) State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code <*>16.051 (relating to State Water Plan).

(26) Water conservation measures--Practices, techniques, and technologies that will reduce the consumption of water, reduce the loss of waste or water, or improve the efficiency in the use of water that may be presented as water management strategies.

(27) Water Conservation Plan--~~A plan~~ **The most current plan** required by Texas Water Code <*>11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate more than 1,000 acre-feet per year or more for municipal, industrial, and other **non-irrigation** uses and for those who ~~irrigate~~ **are authorized to appropriate more than 10,000 acre-feet per year or more for irrigation, and the most current plan required by Texas Water Code <*> 13.146 from a retail public utility that provides potable water service to 3,300 or more connections** These plans must include specific, quantified 5-year and 10-year targets for water savings.

(28) **Water Management Strategy**--A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply, **including through reducing demands.**

(29) **Water User Group (WUG)**--Identified user or group of users for which water demands and water supplies have been identified and analyzed and plans developed to meet water needs. These include:

(A) Incorporated Census places of a population greater than 500, including select Census Designated Places, such as significant military bases or cases in which the Census Designated Place is the only Census place in the county;

(B) Retail public utilities providing more than 280 acre-feet per year for municipal use;

(C) Collective Reporting Units, or groups of retail public utilities that have a common association;

(D) Municipal and domestic water use, referred to as county-other, not included in subparagraphs (A) - (C) of this paragraph; and

(E) Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a county in a RWPA.

(30) **Wholesale Water Provider (WWP)**--Any person or entity, including river authorities and irrigation districts, that has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan. The regional water planning groups shall include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan.

<*>357.11. Designations.

(a) The Board shall review and update the designations of RWPAs as necessary but at least every five years, on its own initiative or upon recommendation of the executive administrator. The Board shall provide 30 days notice of its intent to amend the designations of RWPAs by publication of the proposed change in the Texas Register and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of a RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which regional water plans shall be developed, taking into consideration factors such as:

- (1) River basin and aquifer delineations;
- (2) Water utility development patterns;
- (3) Socioeconomic characteristics;
- (4) Existing regional water planning areas;
- (5) Political subdivision boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a regional water planning group is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the executive administrator shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the executive administrator. The bylaws adopted by the RWPG shall at a minimum address the following elements:

- (1) definition of a quorum necessary to conduct business;
- (2) method to be used to approve items of business including adoption of regional water plans or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and
- (6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one ~~of the following~~ **representatives of each of the following interest categories** as voting members of the RWPG. **However, if** a RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

- (1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;
- (2) Counties, defined as the county governments for the 254 counties in Texas;
- (3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;
- (4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;
- (5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;
- (6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;
- (7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 100 employees or less than \$1 million in gross annual receipts;
- (8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;
- (9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;
- (10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, <*>52(b)(1) and (2), or Article XVI, <*>59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;
- (11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and
- (12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within a RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA; and

(5) Staff member of the Texas Department of Agriculture designated by its commissioner.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in a RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding drought management measures and water conservation practices.

<*>357.12. General Regional Water Planning Group Responsibilities and Procedures.

(a) Prior to the preparation for the RWPs, in accordance with the public participation requirements in **<*>357.21** of this title (relating to Notice and Public Participation), the RWPGs shall:

(1) hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan;

(2) prepare a scope of work that includes a detailed description of tasks to be performed, identifies responsible parties for task execution, a task schedule, task and expense budgets, and describes interim products, draft reports, and final reports for the planning process;

(3) approve any amendments to the scope of work only in an open meeting of the RWPG where notice of the proposed action was provided in accordance with **<*>357.21** of this title; and

(4) designate a political subdivision as a representative of the RWPG eligible to apply for financial assistance for scope of work and RWP development pursuant to Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants).

(b) A RWPG shall hold a public meeting to determine the process for identifying potentially feasible water management strategies; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible water management strategies that are potentially feasible for meeting a need in the region. The public meeting under this subsection shall be in accordance with the requirements of **<*>357.21(b)** of this title.

(c) If applicable, and approved by the EA, implement simplified planning in accordance with guidance to be provided by the EA. If a RWPG determines in its analysis of water needs that it has sufficient supplies in the RWPA to meet water needs for the 50-year planning period, RWPGs may conduct simplified regional water planning as follows:

(1) identify water supplies that are available for voluntary redistribution in a RWPA or to other RWPA's;

(2) where appropriate, adopt previous RWP or state water plan information, updated as necessary, as the RWP; and

(3) other activities upon approval of the EA necessary to complete a RWP that meets rule and statute requirements.

Subchapter B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

<*>357.20. Guidance Principles for State and Regional Water Planning.

Development of the state water plan and of RWPs shall be guided by the principles stated in **<*>358.3** of this title (relating to Guidance Principles).

<*>357.21. Notice and Public Participation.

(a) RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551, with a copy of all materials presented or discussed available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections.

(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; process of identifying potentially feasible water management strategies; ~~Executive Committee meetings; subcommittee or subgroup meetings~~; meetings to replace RWPG members or addition of new RWPG members; and adoption of regional water plans.

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity; and

(C) each County Clerk, in writing, within the RWPA.

(5) Notice and agenda to be posted:

(A) On the website of the host political subdivision or on the Board website if requested by the RWPG; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and water demand projection revision requests to officially adopted Board projections; substitution of alternative water management strategies; and minor amendments to RWPs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet, emailed, and mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice of RWPG activities either in writing or email, as requested by the person or entity;

(C) each County Clerk, in writing, within the RWPA; and

(D) each County Clerk in counties outside the RWPA where a recommended or alternative water management strategy being considered would be located.

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the host political subdivision or on the Board website if requested by the RWPG; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting; and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.

(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; holding hearings for IPPs; and requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA as follows:

(A) before the 30th day preceding the date of the public meeting or hearing; and

(B) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (8)(A) of this subsection.

(4) If applying for Board funding, the notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the regional water planning area; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(5) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on an electronic disc or drive, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting.

(6) Notice shall be mailed to, at a minimum, the following:

(A) notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;

(C) each county judge of a county located in whole or in part in the RWPA;

(D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;

(E) Additionally, for public hearings or meetings to obtain input on development of a future RWP or a meeting or hearing associated with IPPs or major RWP amendments:

(i) each retail public utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(ii) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission; and

(F) Additionally, a RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs.

(7) Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the host political subdivision or on the Board website if requested by the RWPG;

(B) Texas Secretary of State website; and

(C) In the Texas Register.

(8) Public comments to be accepted as follows:

(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to a RWP.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when adopting a RWP or adopting a major amendment to a RWP.

(ii) Comments associated with a preplanning meeting, scope of work development, and an application for funding to the Board must be considered prior to taking RWPG action.

<*>357.22. General Considerations for Development of Regional Water Plans.

(a) RWPGs shall consider existing local, regional, and state water planning efforts, including water plans, information and relevant local, regional, state and federal programs and goals when developing the regional water plan. The RWPGs shall also consider:

(1) water conservation plans;

(2) drought management and drought contingency plans;

- (3) information compiled by the Board from water loss audits performed by retail public utilities pursuant to ~~<*>~~358.6 of this title (relating to Water Loss Audits);
- (4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;
- (5) local and regional water management plans;
- (6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code ~~<*>~~35.019 (relating to Priority Groundwater Management Areas);
- (7) the Texas Clean Rivers Program;
- (8) the U.S. Clean Water Act;
- (9) water management plans;
- (10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;
- (11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code ~~<*>~~16.054 (relating to Local Water Planning);
- (12) approved groundwater regulatory plans; and
- (13) any other information available from existing local or regional water planning studies.

(b) The required content of ~~<*>~~357.30 ~~357.35, 357.40 357.45 and 357.50~~ of this title shall be reported separately as chapters in the RWP shall contain a separate chapter for the contents of ~~<*>~~ 357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.44, 357.45, 357.50 and shall also contain a separate chapter for the contents of ~~<*>~~ 357.34 and 357.35, 357.40 and 357.41 for a total of eleven separate chapters.

Subchapter C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

~~<*>~~357.30. Description of the Regional Water Planning Area.

RWPGs shall describe their regional water planning area including the following:

- (1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;
- (2) current water use and major water demand centers;

- (3) current groundwater, surface water, and reuse supplies including major springs that are important for water supply or protection of natural resources;
- (4) wholesale water providers;
- (5) agricultural and natural resources;
- (6) identified water quality problems;
- (7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;
- (8) summary of existing local and regional water plans;
- (9) the identified historic drought(s) of record within the planning area;
- (10) current preparations for drought within the RWPA;
- (11) information compiled by the Board from water loss audits performed by retail public utilities pursuant to **<*>358.6** of this title (relating to Water Loss Audits); and
- (12) an identification of each threat to agricultural and natural resources and a discussion of how that threat will be addressed or affected by the water management strategies evaluated in the plan.

<*>357.31. Projected Population and Water Demands.

- (a) RWPs shall present projected population and water demands by WUG as defined in **<*>357.10** of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split.
- (b) RWPs shall present projected water demands associated with WWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for each county or portion of a county in the RWPA. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin.
- (c) RWPs shall report the current contractual obligations of WUG and WWPs to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in **<*>357.32** of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use.
- (d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs will determine and report how changes in plumbing fixtures would affect projected municipal water

demands using projections with plumbing code savings provided by the Board or by methods approved by the EA.

(e) Source of population and water demands. In developing RWPs, RWPGs shall use:

(1) Population and water demand projections developed by the EA that will be contained in the next state water plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population or water demand projections if the request demonstrates that population or water demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and water demand projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with <*>357.21(c) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from a RWPG for revision of population or water demand projections.

(f) Population and water demand projections shall be presented for each planning decade for each of the above reporting categories.

<*>357.32. Water Supply Analysis.

(a) RWPGs shall evaluate:

(1) source water availability during drought of record conditions; and

(2) existing water supplies that are legally and physically available to WUGs and wholesale water suppliers within the RWPA for use during the drought of record.

(b) Evaluations shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during drought of record conditions.

(c) Evaluation of the existing surface water available during drought of record shall be based on firm yield. The analysis may be based on justified operational procedures other than firm yield. The EA shall consider a written request from a RWPG to use procedures other than firm yield. For surface water supply analysis, RWPGs will use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. RWPGs will assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use other water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available.

(d) RWPGs shall use modeled available groundwater volumes for groundwater availability, as issued by the Board, and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater availability used in the RWP must be consistent with the desired future conditions as of the date the Board most recently adopted a state water plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent state water plan.

(e) RWPGs shall evaluate the existing water supplies for each WUG and WWP.

(f) Water supplies based on contracted agreements will be based on the terms of the contract, which may be assumed to renew upon contract termination if the contract contemplates renewal or extensions.

(g) Evaluation results shall be reported by WUG in accordance with <*>357.31(a) of this title (relating to Projected Population and Water Demands) and WWPs in accordance with <*>357.31(b) of this title.

<*>357.33. Needs Analysis: Comparison of Water Supplies and Demands.

(a) RWPGs shall include comparisons of existing water supplies and projected water demands to identify water needs.

(b) RWPGs shall compare projected water demands, developed in accordance with <*>357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to WUGs and WWPs in a planning area, as developed in accordance with <*>357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies. Results will be reported for WUGs and for WWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in a RWPA.

(c) The social and economic impacts of not meeting water needs will be evaluated by RWPGs and reported for each RWPA.

(d) Results of evaluations will be reported by WUG in accordance with <*>357.31(a) of this title and WWPs in accordance with <*>357.31(b) of this title.

(e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation water management strategies or direct reuse water management strategies are recommended. This secondary water needs analysis will calculate the water needs that would remain after assuming all recommended conservation and direct reuse water management strategies are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and WWP and decade.

<*>357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies.

(a) RWPGs shall identify and evaluate potentially feasible water management strategies for all WUGs and WWPs with identified water needs.

(b) RWPGs shall identify potentially feasible water management strategies to meet water supply needs identified in <*>357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in <*>357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures). Strategies shall be developed for WUGs and WWPs. The strategies shall meet new water supply obligations necessary to implement recommended water management strategies of WWPs and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWPGs, RWPGs shall provide WMSs to be used during a drought of record.

(c) Potentially feasible water management strategies may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and drought management measures including demand management.

(4) Reuse of wastewater.

(5) Interbasin transfers of surface water.

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code <*>11.139 (relating to Emergency Authorizations).

(d) Evaluations of potentially feasible water management strategies shall include the following analyses:

(1) For the purpose of evaluating potentially feasible water management strategies, the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who will consider a written request from a RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all water management strategies the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during drought of record conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations **of effects on environmental flows will include consideration of** ~~be in accordance with~~ the Commission's adopted environmental flow standards under 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water). **If environmental flow standards have not been established, then environmental** ~~or, if unavailable,~~ information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the state water plan after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that water management strategies are adjusted to provide for ~~appropriate~~ environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other water management strategies and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to ~~<*>~~357.30(7) of this title (relating to Description of the Regional Water Planning Area) including how that threat will be addressed or affected by the water management strategies evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code ~~<*>~~11.085(k)(1) for interbasin transfers of surface water. At minimum, this consideration will include a summation of water needs in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended water management strategies on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended water management strategies to current conditions using best available data.

(9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in <*>357.22(a)(3) of this title (relating to General Considerations for Development of Regional Water Plans).

(10) Other factors as deemed relevant by the RWPG including recreational impacts.

(e) RWPGs shall evaluate and present potentially feasible water management strategies with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

(f) Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending water management strategies. RWPGs shall incorporate water conservation planning and drought contingency planning in the regional water planning area.

(1) Drought management measures including water demand management. RWPGs shall consider drought management measures for each need identified in <*>357.33 of this title and shall include such measures for each user group to which Texas Water Code <*>11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the drought management measures on water needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code <*>11.1272. If a RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, **including potentially applicable best management practices**, for each identified water need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code <*>11.1271 **and 13.146** (relating to Water Conservation Plans) **apply. applies.** The impact of these water conservation practices on water needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code <*>11.1271 **and 13.146**.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code <*>11.1271 **and 13.146**. If RWPGs do not adopt a water conservation strategy to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code <*>11.085 (relating to Interbasin Transfers) applies, RWPGs will include a water conservation strategy, pursuant to <*>11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs will determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable.

RWPGs will develop conservation strategies based on this determination. In preparing this evaluation, RWPGs will seek the input of WUGs and WWP as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs will develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code <*>11.085. **When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices.** Strategy evaluation in accordance with this section will include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by retail public utilities pursuant to <*>358.6 of this title (relating to Water Loss Audits).

(g) RWPGs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPGs model water conservation plans pursuant to Texas Water Code <*>11.1271.

<*>357.35. Recommended and Alternative Water Management Strategies.

(a) RWPGs shall recommend water management strategies to be used during a drought of record based on the potentially feasible water management strategies evaluated under <*>357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies).

(b) RWPGs shall recommend specific water management strategies based upon the identification, analysis, and comparison of water management strategies by the RWPG that the RWPG determines are potentially feasible so that the cost effective water management strategies that are environmentally sensitive are considered and adopted unless a RWPG demonstrates that adoption of such strategies is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs will follow processes described in <*>357.34 of this title. The RWPG may include alternative water management strategies evaluated by the processes described in <*>357.34 of this title.

(c) Strategies will be selected by the RWPGs so that cost effective water management strategies, which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.

(d) RWPGs shall identify and recommend water management strategies for all WUGs and WWP with identified water needs and that meet all water needs during the drought of record except in cases where:

(1) no water management strategy is feasible. In such cases, RWPGs must explain why no management strategies are feasible; or

(2) a political subdivision that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.

(e) Specific recommendations of water management strategies to meet an identified need will not be shown as meeting a need for a political subdivision if the political subdivision in question objects to inclusion of the strategy for the political subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.

(f) Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.

(g) RWPGs shall report the following:

(1) Recommended water management strategies and the associated results of all the potentially feasible water management strategy evaluations by WUG and WWP. If a WUG or WWP lies in one or more counties or RWPA's or river basins, data will be reported for each river basin, RWPA, and county.

(2) Calculated planning **safety management supply** factors for each WUG and WWP included in the RWP assuming all recommended water management strategies are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended water management strategies for each entity; divided by that entity's total projected water demand, within the planning decade. The resulting calculated safety factor shall be presented in the plan by entity and decade for every WUG and WWP.

(3) Fully evaluated Alternative Water Management Strategies included in the adopted RWP shall be presented together in one place in the RWP.

Subchapter D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

<*>357.40. Impacts of Regional Water Plan.

(a) RWPs shall include a quantitative description of the socioeconomic impacts of not meeting the identified water needs pursuant to <*>357.33(c) of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands).

(b) RWPs shall include a description of the impacts of the RWP regarding:

(1) Agricultural resources pursuant to <*>357.34(d)(3)(C) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(2) Other water resources of the state including other water management strategies and groundwater and surface water interrelationships pursuant to <*>357.34(d)(4) of this title;

(3) Threats to agricultural and natural resources identified pursuant to <*>357.34(d)(5) of this title;

(4) Third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas pursuant to <*>357.34(d)(7) of this title;

(5) Major impacts of recommended water management strategies on key parameters of water quality pursuant to <*>357.34(d)(8) of this title; and

(6) Effects on navigation.

(c) RWPs shall include a summary of the identified water needs that remain unmet by the RWP.

<*>357.41. Consistency with Long-Term Protection of Water Resources, Agricultural Resources, and Natural Resources.

RWPGs shall describe how RWPs are consistent with the long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles in <*>358.3(4) and (8) of this title (relating to Guidance Principles).

<*>357.42. Drought Response Information, Activities, and Recommendations.

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, drought of record conditions based on the following subsections.

(b) RWPGs shall conduct an overall assessment of current preparations for drought within the RWPA including a description of how water suppliers in the RWPA identify and respond to the onset of drought. This may include information from local drought contingency plans.

(c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with <*>357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing drought contingency plans.

(d) RWPGs will collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. In accordance with Texas Water Code <*>16.053(r), this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs will provide general descriptions of local drought contingency plans that involve making emergency connections between water systems or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

(f) RWPGs may designate recommended and alternative drought management water management strategies and other recommended drought measures in the RWP including:

(1) List and description of the recommended drought management water management strategies and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended drought management water management strategies;

(2) List and description of alternative drought management water management strategies and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative drought management water management strategies;

(3) List of all potentially feasible drought management water management strategies that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended drought management measures, if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWPs in the event that the existing water supply sources become temporarily unavailable to the WUGs and WWPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and

(3) all county-other WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

(i) RWPGs shall make drought preparation and response recommendations regarding:

(1) Development of, content contained within, and implementation of local drought contingency plans required by the Commission;

(2) Current drought management preparations in the RWPA including:

(A) drought response triggers; and

(B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model drought contingency plans.

<*>357.43. Regulatory, Administrative, or Legislative Recommendations.

(a) The RWPs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWPs recommendations for all or parts of river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) A RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in <*>358.2 of this title (relating to Definitions).

(2) For every river and stream segment that has been designated as a unique river or stream segment by the legislature, during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the

river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended water management strategies. The assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.

(c) Unique Sites for Reservoir Construction. A RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at **<*>358.2** of this title shall be used to determine if a site is unique for reservoir construction.

(d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions.

(e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.

(f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

<*>357.44. Infrastructure Financing Analysis.

RWPGs shall assess and quantitatively report on how individual local governments, regional authorities, and other political subdivisions in their RWPA propose to finance recommended water management strategies.

<*>357.45. Implementation and Comparison to Previous Regional Water Plan.

(a) RWPGs shall describe the level of implementation of previously recommended water management strategies. Information on the progress of implementation of all water management strategies that were recommended in the previous RWP, including conservation and drought management water management strategies; and the implementation of projects that have affected progress in meeting the state's future water needs.

(b) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

- (1) Water demand projections;
- (2) Drought of record and hydrologic and modeling assumptions used in planning for the region;
- (3) Groundwater and surface water availability, existing water supplies, and identified water needs for WUGs and WWPs; and

(4) Recommended and alternative water management strategies.

Subchapter E. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

<*>357.50. Adoption, Submittal, and Approval of Regional Water Plans.

(a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (e)(2) of this section, for approval and inclusion in the state water plan.

(b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG.

(c) The RWPGs shall distribute the IPP in accordance with <*>357.21(d)(5) of this title (relating to Notice and Public Participation).

(d) The RWPGs shall solicit, and consider the following comments when adopting a RWP:

(1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;

(2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to <*>357.21(d) of this title until at least 90 days after the public hearing is held pursuant to <*>357.21(d) of this title; and

(3) any written or oral comments received from the public after the first public hearing notice is published pursuant to <*>357.21(d) of this title until at least 60 days after the public hearing is held pursuant to <*>357.21(d) of this title.

(e) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.

(1) RWPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) An executive summary that documents key RWP findings and recommendations; and

(C) Summaries of all written and oral comments received pursuant to subsection (d) of this section, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (d) of this section.

(2) RWPGs shall submit regional plans to the EA according to the following schedule:

(A) Initially prepared plans are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's planning database system. All changes and corrections to this information must be entered into the Board's database prior to submittal of an adopted plan.

(C) The RWPG will transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code <*>16.053(i).

(E) Once approved by the Board, RWPs will be made available on the Board website.

(f) The RWPGs shall submit in a timely manner to the EA information on any known interregional conflict between RWPs.

(g) The RWPGs shall modify the RWP to incorporate Board resolutions of interregional conflicts.

(h) The RWPGs shall seek to resolve conflicts with other RWPGs and shall participate in any Board sponsored efforts to resolve interregional conflicts.

(i) Approval of RWPs by the Board. The Board may approve a RWP only after it has determined that the RWP complies with statute and rules.

(j) Upon receipt of a RWP adopted by the RWPG, the Board will consider approval of such plan based on the following criteria:

(1) The Board shall verify adoption of the RWP by the RWPG.

(2) The Board shall approve the plan only after it considers any information from RWPGs of the existence of an interregional conflict and finds that no interregional conflict exists. The Board shall not consider approval of a RWP unless all RWPs which could contain conflicts have also been submitted to the Board for approval, or the Board determines that such plans are not likely to be submitted.

(k) Board Adoption of State Water Plan. RWPs approved by the Board pursuant to this chapter shall be incorporated into the state water plan as outlined in <*>358.4 of this title (relating to Guidelines).

<*>357.51. Amendments to Regional Water Plans.

(a) Local Water Planning Amendment Requests. A political subdivision in the RWPA may request a RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. A RWPG must formally consider such request within 180 days after its receipt and shall amend its adopted RWP if it determines an amendment is warranted. If the political subdivision is not satisfied with the RWPG's decision on the issue, it may file a petition with the EA to request Board review the decision and consider changing the approved RWP. The political subdivision shall send a copy of the petition to the chair of the affected RWPG.

(1) The petition must state:

(A) the changed condition or new information that affects the approved RWP;

(B) the specific sections and provisions of the approved RWP that are affected by the changed condition or new information;

(C) the efforts made by the political subdivision to work with the RWPG to obtain an amendment; and

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The political subdivision that submitted the petition will receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, the EA will present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA will provide the RWPG, the political subdivision submitting the petition, and any political subdivision determined by the EA to be affected by the issue 30 days notice.

(b) Major Amendments to RWPs and State Water Plan. A RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to <*>357.21(d) of this title (relating to Notice and Public Participation). An amendment is major if it does not meet the criteria of subsection (c), (d) or (e) of this section. A RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

(1) Initiation of a Major Amendment. An entity may request a RWPG amend its adopted RWP. A RWPG's consideration for action to initiate an amendment may occur at a regularly scheduled meeting.

(2) **RWPG Public Hearing.** The RWPG shall hold a public hearing on the amendment as defined in <*>357.21(d) of this title. The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in <*>357.21(d) of this title.

(3) The proposed major amendment:

(A) Shall not result in an over-allocation of an existing or planned source of water;

(B) Shall not produce unmet needs new to the adopted RWP; and

(C) Shall conform with rules applicable to RWP development as defined in Subchapters C and D of this chapter.

(4) **RWPG Major Amendment Adoption.** The RWPG may adopt the amendment at a regularly scheduled RWPG meeting held in accordance with <*>357.21(b) of this title following the 30-day public comment period held in accordance with <*>357.21(d) of this title. The amendment shall include response to comments received.

(5) **Board Approval of Major Amendment.** After adoption of the major amendment, the RWPG shall submit the amendment to the Board which shall consider approval of the amendment at its next regularly scheduled meeting following EA review of the amendment.

(c) **Minor Amendments to RWPs and State Water Plan.**

(1) **Minor Amendment to RWP.** A RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.

(2) **EA Pre-Adoption Review.** The EA shall evaluate the proposed minor amendment prior to the RWPG's vote to adopt the amendment. An amendment is minor if it meets the following criteria:

(A) does not result in over-allocation of an existing or planned source of water;

(B) does not relate to a new reservoir;

(C) does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;

(D) does not have a significant substantive impact on water planning or previously adopted management strategies; and

(E) does not delete or change any legal requirements of the plan.

(3) **Determination by EA.** If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.

(4) **RWPG Public Meeting.** After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with **<*>357.21(c)** of this title. The public shall have an opportunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning responses.

(5) **Board Approval of Minor Amendment.** After adoption of the minor amendment, the RWPG shall submit the amendment to the Board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.

(d) **Amendment for Water Planning for a Clean Coal Project.** An amendment to a RWP or the state water plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code **<*>5.001**, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, a RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

- (1) the amendment does not significantly change the RWP; or
- (2) the amendment does not adversely affect other water management strategies in the RWP.

(e) **Substitution of Alternative Water Management Strategies.** After notice is provided in accordance with **<*>357.21(c)** of this title, RWPGs may substitute one or more evaluated alternative water management strategies for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the alternative water management strategy is capable of meeting the same water need. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

(f) **Amending the State Water Plan.** Following amendments of RWPs, including substitutions of alternative water management strategies, the Board shall make any necessary amendments to the state water plan as outlined in **<*>358.4** of this title (relating to Guidelines).

Subchapter F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

<*>357.60. Consistency of Regional Water Plans.

(a) RWPGs shall submit to the development Board a RWP that is consistent with the guidance principles and guidelines outlined in **<*>357.20** of this title (relating to Guidance Principles for State and Regional Water Planning). Information provided shall be based on data provided or approved by the Board in a format consistent with the guidelines of Subchapters C and D of this chapter and guidance by the EA.

(b) For the purposes of the Texas Water Code **<*>16.053(j)** (relating to Board Financial Assistance) projects proposed to the Board for funding will be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:

- (1) Is an enhancement of a current water supply identified in the analysis developed under **<*>357.32** of this title (relating to Water Supply Analysis) as meeting a demand, even though the project is not specifically recommended in the RWP;
 - (2) Involves a minor modification to an existing surface water right that is not in conflict with the RWP; and
 - (3) Is meeting a need in a manner consistent with the plan developed under Subchapters C and D of this chapter.
 - (4) For the purposes of the Texas Water Code **<*>16.053(j)**, projects proposed to the Board for funding to meet any need identified in an approved RWP for which there is not a recommended water management strategy in such plan will be considered by the Board not to be consistent with the approved RWP.
 - (5) For the purposes of the Texas Water Code **<*>16.053(k)** (relating to Board Waivers), the Board may consider, among other factors, changed conditions if a political subdivision requests a waiver of the Texas Water Code **<*>16.053(j)** for a project proposed to the Board for funding to meet a need in a manner that is not consistent with the manner the need is addressed in an approved RWP. The Board shall request the members of any affected RWPG to provide input on the request for waiver of the Texas Water Code **<*>16.053(j)**.
- (c) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. RWPGs shall consider and use as a guide the state water plan and local water plans provided for in the Texas Water Code **<*>16.054** (relating to Local Water Planning).

<*>357.61. Intraregional Conflicts in Development of Regional Water Plans.

The EA shall provide technical assistance within available resources to the RWPGs requesting such assistance in performing regional water planning activities and if requested, may facilitate resolution of conflicts within RWPGs.

<*>357.62. Interregional Conflicts.

- (a) In the event the Board finds that an interregional conflict exists between adopted RWPGs, the EA may use the following process:
- (1) notify the affected RWPGs of the nature of the interregional conflict;
 - (2) request affected RWPGs assistance in resolving the conflict; and
 - (3) negotiate resolutions of conflicts with RWPGs as determined by the EA.
- (b) In the event the negotiation is unsuccessful, the EA may:

- (1) determine a proposed recommendation for resolution of the conflict;
 - (2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the Texas Register and in a newspaper of general circulation in each county located in whole or in part in the RWPA's involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in <*>357.21(d) of this title (relating to Notice and Public Participation) in the RWPA's proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPA's proposed to be impacted and to each affected RWPG;
 - (3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, political subdivisions, and members of the public on the issues identified by the Board as unresolved problems; and
 - (4) make a recommendation to the Board for resolution of the conflict.
- (c) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.
- (d) The EA shall notify affected RWPGs of Board's decision and shall direct changes to the affected RWPs.

<*>357.63. Failure of a Regional Water Plan to Meet Regional Water Planning Requirements.

- (a) In the event the Board finds that the RWP does not meet the requirements of the Texas Water Code <*>16.053, this chapter, and Chapter 358 of this title (relating to State Water Planning Guidelines), the Board shall direct the RWPG to make changes necessary for compliance with legal requirements.
- (b) In the event the Board directs the RWPG to make changes to its RWP, the RWPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

<*>357.64. Conflicts Between Regional Water Plans and Groundwater Management Plans.

- (a) A groundwater conservation district may file a written petition with the EA stating that a potential conflict exists between the district's approved management plan developed under Texas Water Code <*>36.1071 (relating to Management Plans) and the approved state water plan. A copy of the petition shall be provided to the affected RWPG. The petition must state:
 - (1) the specific nature of the conflict;

(2) the specific sections and provisions of the approved management plan and approved state water plan that are in conflict; and

(3) the proposed resolution to the conflict.

(b) If the EA determines a conflict exists, the EA will provide technical assistance to and coordinate with the groundwater conservation district and the affected RWPG to resolve the conflict. Coordination may include any of the following processes:

(1) requiring the RWPG to respond to the petition in writing;

(2) meeting with representatives from the groundwater conservation district and the RWPG to informally mediate the conflict; and/or

(3) coordinating a formal mediation session between representatives of the groundwater conservation district and the RWPG.

(c) If the parties do not reach resolution, the EA will recommend a resolution to the conflict to the Board within 60 days of the date the mediation is completed. Notice shall be provided at least 15 days prior to the date of the Board meeting to discuss the proposed resolution. The Board may:

(1) revise an approved RWP; and

(2) revise a district's approved management plan.

(d) If the Board requires a revision to the groundwater conservation district's approved management plan, the Board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the Board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and Board comments, prepare, revise, and adopt its plan, and submit the revised plan to the Board pursuant to Chapter 356 of this title (relating to Groundwater Management). If the groundwater conservation district disagrees with the decision of the Board, the district may appeal the decision to a district court in Travis County, Texas.

(e) If the Board requires a revision to the approved RWP, the Board shall provide information to the RWPG on what revisions are required and why. The RWPG shall prepare the revisions as a major amendment to their approved RWP pursuant to ~~357.51~~357.51(b) of this title.

(f) At the Board's discretion, the Board shall include in the state water plan a discussion of the conflict and its resolution.

ATTACHMENT D

Preamble for Repeal, 31 TAC Chapter 357

The Texas Water Development Board (TWDB) adopts the repeal of chapter 357 relating to Regional Water Planning. The proposal is adopted without changes as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3357).

355, Subchapter C repeal is 3352; 355, Subchapter C proposal is 3353; Chapter 357 repeal is 3357; Chapter 357 proposed is 3358, Chapter 358, Subchapter A repeal is 3377; Chapter 358, Subchapter A proposed is 3378.

Corrections of error were published in the May 28, 2012 issue of the Texas Register (37 TexReg 3759).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the repeal of chapter 357. A new chapter 357 is adopted in today's *Texas Register*.

PUBLIC COMMENTS: No public comments were received on the proposed repeal of chapter 357.

STATUTORY AUTHORITY

The amendment is adopted under the authority of 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 Water Code §§ 16.051 relating to state water plan and 16.053 relating to regional water plans.

This rulemaking affects Water Code, Chapter 16, <*>16.053 relating to regional water plans.

ATTACHMENT E

Preamble for Adoption, 31 TAC Chapter 358, Subchapter A and Proposed Rule

The Texas Water Development Board (TWDB) adopts chapter 358, subchapter A. The proposal is adopted with changes as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3378).

355, Subchapter C repeal is 3352; 355, Subchapter C proposal is 3353; Chapter 357 repeal is 3357; Chapter 357 proposed is 3358, Chapter 358, Subchapter A repeal is 3377; Chapter 358, Subchapter A proposed is 3378.

Corrections of error were published in the May 28, 2012 issue of the Texas Register (37 TexReg 3759).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts subchapter A, chapter 358 with changes to the proposed text. The following sections are adopted with changes made in response to public comments. <*>358.2(a)(7) relating to definition for site of unique value for construction of reservoirs; <*> 358.3(a)(4) relating to guidance principle for the orderly development of regional water plans; <*> 358.3(a) relating to guidance principles; <*>358.3(a)(21) relating to guidance principles for environmental information in the evaluation of water management strategies; and <*>358.3(a)(22) relating to guidance principles for environmental water needs. Other non-substantive changes relating to typographical errors, including re-numbering corrections, are also being made in this adopted rule.

PUBLIC COMMENTS.

One commenter stated that <*>358.2(a)(7) relating to definition of site of unique value for construction of reservoirs should not contain the phrase “alternative long-term scenario” because the term is not defined and it creates uncertainty.

This comment identifies an error in the proposed rule where language was retained even though the definition of “water management scenarios” was removed. The Board will revise this section.

A commenter noted that <*>358.3(a)(4) relating to guidance principles about the orderly development of a RWP contains too many concepts and is unclear and proposes a new subsection that includes a requirement for regional water planning groups to identify policies and actions that may be needed to meet Texas' water supply needs and prepare for and respond to drought conditions.”

The comment improves the clarity of the rule. The Board will revise the language by adding new subsection requiring Regional Water Planning Groups (RWPG) to recommend policies and actions needed to respond to drought.

One commenter stated that <*>358.3(a)(11) relating to guidance principles about balancing economic, social and other values proposed adding the words “variety of water management strategies” to consider all relevant values.

The Board is not making a change based on this comment. The RWPGS are required to identify potentially feasible and then recommended water management strategies to address future needs. These requirements are in Subchapter C of Chapter 357 relating to planning activities for needs analysis and strategy recommendations and also in <*>357.35 relating to recommended and alternative water management strategies to be used during a drought of record. Thus, the rules already contain requirements to consider a variety of water management strategies and duplicating the language suggested would not have a meaningful effect.

A commenter noted that the references in <*>358.3(a)(21) and (22) to basins is overbroad and suggested changes to note that the language applies only to areas where environmental flow standards are applicable and available and also suggested explicit reference to reports of the basin and bay area stakeholders.

The Board is making a change to <*>358.3(a)(21) based on the comment which clarifies the proposed language.

The Board is not making a change to <*>358.3(a)(22) because the applicable metrics and methodology are contained in the Texas Commission on Environmental Quality (Commission) rules relating to environmental flows. The adoption of the environmental flow rules was based on final recommendations and some of the basin and bay area stakeholders’ recommendations were not adopted so adding the reference to them may create confusion. The RWPGs may consult any documents they find useful but the Board declines to require them to use these specific reports.

A commenter questioned whether the guidance principle in <*>358.3(a)(22) is correctly stated because it states “adjustments to water management strategies to provide for appropriate, environmental water needs” and the commenter does not think that the TWDB should make any adjustments after the RWPG has completed its “appropriate” environmental impact analysis.

The Board will revise the language to improve the clarity in this section. Where environmental flow standards are not established, the state environmental planning consensus criteria may be used. The language of “appropriate environmental water needs...” is erroneous. The planning process requires RWPG, not the Board, to adjust their water management strategies based upon analyses conducted in accordance with adopted environmental flow standards or consensus criteria.

One commenter noted that <*> 357.34 (c) is referenced twice in the proposed language and that it appears that the second reference should actually refer to <*> 357.34 (d).

The Board appreciates this comment and will correct the erroneous reference noted by the commenter.

A commenter noted that <*>358.4(b)(4) relating to guidelines for descriptions of future conditions should include references to natural and agricultural resources and also recommended language for a new subparagraph relating to predictions about natural and agricultural resources.

The Board is not making a change to this rule which is a guideline for regional water planning. The rule requires a description of future conditions parallel to the contents of the regional water plans. The consideration of agricultural and natural resources occurs throughout the planning process and adding language to the guidelines will not result in any significant change to the discussions already required about those resources.

The Board received comments from the following entities: Lower Colorado River Authority, National Wildlife Federation, and the Sierra Club.

STATUTORY AUTHORITY

The amendment is adopted under the authority of 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 Water Code § 16.051 and 16.053.

This rulemaking affects Water Code, Chapter 16.

Chapter 358. STATE WATER PLANNING GUIDELINES

Subchapter A. STATE WATER PLAN DEVELOPMENT

<*>358.1. Applicability.

This subchapter governs the Board's preparation, development, formulation, and adoption of the state water plan.

<*>358.2. Definitions.

The following words and acronyms, used in this chapter, have the following meanings.

- (1) Board--The Texas Water Development Board.
- (2) Commission--The Texas Commission on Environmental Quality.
- (3) Regional water plan (RWP)--The plan adopted or amended by a regional water planning group pursuant to Texas Water Code <*>16.053 (relating to Regional Water Plans) and Chapter 357 of this title (relating to Regional Water Planning).
- (4) Regional water planning area--Area designated pursuant to Texas Water Code <*>16.053 and Chapter 357 of this title.
- (5) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code <*>16.053 and Chapter 357 of this title.
- (6) River and stream segments of unique ecological value--Those river or stream segments that may be identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan based on the following criteria:
 - (A) Biological function--stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;
 - (B) Hydrologic function--stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;
 - (C) Riparian conservation areas--stream segments which are fringed by significant areas in public ownership including state and federal refuges, wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas managed for conservation purposes under a governmentally approved conservation plan;

(D) High water quality/exceptional aquatic life/high aesthetic value--stream segments and spring resources that are significant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or

(E) Threatened or endangered species/unique communities--sites along stream where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species; and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.

(7) Site of unique value for construction of reservoirs--Those sites identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan where:

(A) Site-specific reservoir development is recommended as a specific water management strategy or ~~in an alternative long-term scenario as a unique reservoir site~~ in an adopted regional water plan; or

(B) The location, hydrologic, geologic, topographic, water availability, water quality, environmental, cultural, and current development characteristics, or other pertinent factors make the site uniquely suited for reservoir development to provide water supply for:

(i) The current planning period; or

(ii) Where it might reasonably be needed to meet needs beyond the 50-year planning period.

(8) State drought preparedness plan--A plan, separate from the state water plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code <*>16.0551 (relating to State Drought Preparedness Plan).

(9) State drought response plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the state water plan and the state drought preparedness plan pursuant to Texas Water Code <*>16.055 (relating to Drought Response Plan).

(10) State water plan--The most recent comprehensive statewide water plan adopted by the Board under Texas Water Code <*>16.051 (relating to State Water Plan).

(11) Water management strategy--A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply.

<*>358.3. Guidance Principles.

Development of the state water plan shall be guided by the following principles.

(1) The state water plan shall provide for the preparation for and response to drought conditions.

(2) The regional water plans and state water plan shall serve as water supply plans under drought of record conditions.

(3) Consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources.

(4) Regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the regional water planning area ~~and state including identification of those policies and actions that may be needed to meet Texas' water supply needs and preparation for and response to drought conditions.~~

(5) Regional water plans shall include identification of those policies and action that may be needed to meet Texas' water supply needs and prepare for and respond to drought conditions.

(6) RWPG decision-making shall be open to and accountable to the public with decisions based on accurate, objective and reliable information with full dissemination of planning results except for those matters made confidential by law.

(7) The RWPG shall establish terms of participation in its water planning efforts that shall be equitable and shall not unduly hinder participation.

(8) Consideration of the effect of policies or water management strategies on the public interest of the state, water supply, and those entities involved in providing this supply throughout the entire state.

(9) Consideration of all water management strategies the regional water plan determines to be potentially feasible when developing plans to meet future water needs and to respond to drought so that cost effective water management strategies which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are considered and approved.

(10) Consideration of opportunities that encourage and result in voluntary transfers of water resources, including but not limited to regional water banks, sales, leases, options, subordination agreements, and financing agreements.

(11) Consideration of a balance of economic, social, aesthetic, and ecological viability.

(12) For regional water planning areas without approved regional water plans or water providers for which revised plans are not developed through the regional water planning process, the use of information from the adopted state water plan and other completed studies that are sufficient for water planning shall represent the water supply plan for that area or water provider.

(13) All surface waters are held in trust by the state, their use is subject to rights granted and administered by the Commission, and the use of surface water is governed by the prior appropriation doctrine, unless adjudicated otherwise.

(14) Existing water rights, water contracts, and option agreements shall be protected. However, potential amendments of water rights, contracts and agreements may be considered and evaluated. Any amendments will require the eventual consent of the owner.

(15) The production and use of groundwater in Texas is governed by the rule of capture doctrine unless and to the extent that such production and use is regulated by a groundwater conservation district, as codified by the legislature at Texas Water Code <*>36.002 (relating to Ownership of Groundwater).

(16) Consideration of recommendations of river and stream segments of unique ecological value to the legislature for potential protection.

(17) Consideration of recommendation of sites of unique value for the construction of reservoirs to the legislature for potential protection.

(18) Consideration of water planning and management activities of local, regional, state, and federal agencies, along with existing local, regional, and state water plans and information and existing state and federal programs and goals.

(19) Designated water quality and related water uses as shown in the state water quality management plan shall be improved or maintained.

(20) Coordination of water planning and management activities of RWPGs to identify common needs and issues and achieve efficient use of water supplies, including the Board and other relevant RWPGs, working together to identify common needs, issues, and challenges while working together to resolve conflicts in a fair, equitable, and efficient manner.

(21) The water management strategies identified in approved RWPs to meet needs shall be described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved RWP.

(22) The evaluation of water management strategies shall use environmental information in accordance with the Commission's adopted environmental flow standards under 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water) **where applicable** or, in basins where standards **are not available** or have not been adopted, information from existing site-specific studies or state consensus environmental planning criteria.

(23) Consideration of environmental water needs including instream flows and bay and estuary inflows, including adjustments **by the RWPGs** to water management strategies to provide for ~~appropriate~~, environmental water needs including instream flows and bay and estuary needs. Consideration shall be consistent with the Commission's adopted environmental flow standards under 30 TAC Chapter 298 in basins where standards have been adopted.

(24) Planning shall be consistent with all laws applicable to water use for the state and regional water planning area.

(25) The inclusion of ongoing water development projects that have been permitted by the Commission or a predecessor agency.

(26) Specific recommendations of water management strategies shall be based upon identification, analysis, and comparison of all water management strategies the RWPG determines to be potentially feasible so that the cost effective water management strategies which are environmentally sensitive are considered and adopted unless the RWPG demonstrates that adoption of such strategies is not appropriate. To determine cost-effectiveness, the RWPGs will use the process described in ~~357.34 (e)~~ (d)(3)(A) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies) and, to determine environmental sensitivity, the RWPGs shall use the process described in ~~357.34(e)~~(d)(3)(B) of this title.

(27) RWPGs shall conduct their planning to achieve efficient use of existing water supplies, explore opportunities for and the benefits of developing regional water supply facilities or providing regional management of water facilities, coordinate the actions of local and regional water resource management agencies, provide substantial involvement by the public in the decision-making process, and provide full dissemination of planning results.

(28) RWPGs must consider existing regional water planning efforts when developing their plans.

~~358.4~~. Guidelines.

(a) The executive administrator shall prepare, develop, and formulate the state water plan and the Board shall adopt a state water plan pursuant to the schedule in Texas Water Code ~~16.051~~. The executive administrator shall identify the beginning of the 50-year planning period for the state and regional water plans. The executive administrator shall incorporate into the state water plan presented to the Board those regional water plans approved by the Board pursuant to Texas Water Code ~~16.053~~ and Chapter 357 of this title (relating to Regional Water Planning). The Board shall, not less than 30 days before adoption or amendment of the state water plan, publish notice in the Texas Register of its intent to adopt a state water plan and shall mail notice to each regional water planning group. The Board shall hold a hearing, after which it may adopt a water plan or amendments thereto.

(b) The state water plan shall include summaries for the state and from approved regional water plans, when available, which shall address, at a minimum, the following topics:

(1) Basis for planning, including sections on planning history, Texas water statutes, rules, regulations, and Texas' water supply institutions;

(2) Description of methods used for projecting future water demands which shall include methods for projecting future population and water demands for municipal and associated

commercial and institutional uses, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;

(3) Description of methods to address water quality problems related to water supply, to ensure public health, safety and welfare, to further economic growth, to protect agricultural and natural resources, to determine water supply availability, and to address drought response planning;

(4) Description of future conditions which shall, at a minimum, include:

(A) Demands for water;

(B) Supplies currently available;

(C) Comparison of water demand and supply to identify surpluses or needs of water;

(D) Social and economic impact of not meeting needs;

(E) Recommended solutions to meet needs;

(F) Needs for which no feasible water management strategy exists; and

(G) descriptions in subparagraphs (A) - (F) of this paragraph shall be presented for each county and basin by the major providers of water for municipal uses and for the following water use categories: municipal and associated commercial and institutional uses; manufacturing; irrigation; steam electric power generation; mining; and livestock watering;

(5) Consideration of recommendations of river and stream segments of unique ecological value and sites of unique value for construction of reservoirs to the legislature for potential protection;

(6) Regulatory, administrative, and legislative recommendations that the Board believes are needed and desirable to facilitate the orderly development, management, and conservation of water resources, to facilitate more voluntary water transfers, and the preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the entire state;

(7) The progress in meeting future water needs, including an evaluation of implementation of all water management strategies that were recommended in the previous state water plan and projects funded by the Board; and

(8) Current and planned preparations for, and responses to, drought conditions in the state to be used in the development of the state's drought preparedness plan by the Drought Preparedness Council.

ATTACHMENT F

Preamble for Repeal, 31 TAC Chapter 358, Subchapter A

The Texas Water Development Board (TWDB) adopts the repeal of chapter 358, subchapter A relating to State Water Plan. The proposal is adopted without changes as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3377).

355, Subchapter C repeal is 3352; 355, Subchapter C proposal is 3353; Chapter 357 repeal is 3357; Chapter 357 proposed is 3358, Chapter 358, Subchapter A repeal is 3377; Chapter 358, Subchapter A proposed is 3378.

Corrections of error were published in the May 28, 2012 issue of the Texas Register (37 TexReg 3759).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the repeal of Chapter 358, Subchapter A relating to State Water Plan

PUBLIC COMMENTS:

No public comments were received on the proposed repeal of chapter 358, subchapter A.

STATUTORY AUTHORITY

The amendment is adopted under the authority of 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 Water Code § 16.051.

This rulemaking affects Water Code, Chapter 16, <*>16.051 relating to state water plan.