

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, Interim General Counsel
Jessica Zuba, Deputy Executive Administrator, Water Supply & Infrastructure

FROM: Temple McKinnon, Manager, Regional Water Planning

DATE: November 3, 2016

SUBJECT: 31 Texas Administrative Code Chapter 357 relating to Regional Water Planning

ACTION REQUESTED

Consider adopting and authorizing publication of amendments and new provisions to 31 Texas Administrative Code (TAC) Chapter 357, relating to Regional Water Planning.

BACKGROUND

On August 5, 2016, proposed amendments to 31 TAC Chapter 357 were published in the *Texas Register* with a deadline to receive public comments by September 6, 2016.

By statute, the Board is required to respond to timely submitted comments and, if warranted, modify the proposed rules. The Executive Administrator 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 Texas Water Development Board received comments from the following entities: Brazos River Authority; Central Texas Water Coalition; City of Austin; Freese and Nichols, Inc.; Hays Caldwell Public Utility Agency; High Plains Underground Water Conservation District; Hill Country Alliance; Holland Groundwater Management Consultants, LLC; Lone Star Groundwater Conservation District; Lower Colorado River Authority; City of Marble Falls; National Wildlife Federation, the Lone Star Chapter of the Sierra Club and the Galveston Bay Foundation; Prairielands Groundwater Conservation District; San Antonio Water System; San Marcos River Foundation; Texas Alliance of Groundwater Districts; Texas Center for Policy Studies; Texas Rural Water Association; Water Planning

Our Mission : **Board Members**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas :
: Bech Bruun, Chairman | Kathleen Jackson, Member | Peter Lake, Member
:
: Jeff Walker, Executive Administrator

Subcommittee and Surface Water Committee of Texas Water Conservation Association; Upper Trinity Groundwater Conservation District; and 2,176 individuals.

KEY ISSUES

Significant changes that were made in the final rule language in response to comments and that are being considered for adoption are summarized below. The comments summarized below are only those that resulted in changes to the final rule language; all comments received, and the responses, are summarized in the attachment to this memo as part of the rule adoption package.

Modeled Available Groundwater (MAG) Peak Factor

This rulemaking introduced the definition and use of a MAG Peak Factor. This is a percentage that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, *for planning purposes*, shall be considered temporarily available for pumping consistent with desired future conditions. Comments received emphasized that a MAG Peak Factor is for planning purposes only and does not affect groundwater conservation district authority to permit and that the technical basis for such a factor include sufficient detail for the groundwater conservation district or groundwater management area to evaluate the request. The definition in 31 TAC §357.10(20) and the approval process in 31 TAC §357.32(d)(3)(B) have been revised to varying degrees in response to comments.

Definitions of Water User Group and County-Other

This rulemaking addressed the definition of water user group to define the term to reflect the utility-based planning approach. Comments received requested the inclusion of privately owned utilities as a water user group if one or more of its systems supplied 100 acre-feet per year, rather than all of the utility's systems supplying 100 acre-feet per year; that privately-owned utilities and facilities meeting the 100 acre-feet per year threshold should be included unless they opt out; clarification as to what utilities are included in the definition; and clarification as to what individuals or entities are included in the County-Other water user group. The definitions 31 TAC §§357.10(7) and (41) have been revised to varying degrees in response to comments.

Wholesale Water Provider

This rulemaking revised the term to eliminate the annual 1,000 acre-foot delivery or sales threshold and stipulate that the regional water planning group will determine the wholesale water providers in its region. Comments received requested clarification of the regional water planning group's role in determining wholesale water providers in the development of the plans and whether planning groups could determine the use of a wholesale water provider based upon anticipated future contractual relationships as was provided for in the previous rules and was inadvertently removed in the rule proposal. The definition 31 TAC §357.10(42) has been revised in response to comments.

Posting of Public Notice

This rulemaking implements changes consistent with House Bill 3357, 84th Legislative Session allowing a political subdivision or district to post notice of its meetings on its website as an alternative to providing notice to the county clerk of the county in which its administrative offices are located. Comments received expressed concern that reducing the posting requirements from each county of the regional water planning area may result in decreased public notice. Another commenter recommended that the language be clarified regarding required notice to municipalities split between regional planning areas. The posting provisions in 31 TAC §357.21(b)(5)(A), §357.21(c)(5)(A), §357.21(d)(5)(B), §357.21(d)(6)(A), and §357.21(e)(4)(A) have been revised in response to comments.

Evaluation of Contractual Obligations of Water User Groups and Wholesale Water Providers

This rulemaking revised the requirement from “report” to “evaluate” regarding contractual obligation of water user groups and wholesale water providers beyond the projected demands for those entities in order to retain required analysis during plan development while removing nonessential reporting requirements associated with proposed changes to 31 TAC §357.31(b). Comments received expressed concern at the open-ended nature of the revision and suggested that the language be clarified to limit evaluations to the amount of water secured by the contract and the contract’s duration. The language in 31 TAC §357.31(c) has been revised in response to comments.

Run-of-River Availability Analysis

This rulemaking included the words “use anticipated sedimentation” as the default assumption that regional water planning groups should use in the evaluation of existing water supplies. A comment was received requesting the rule be clarified to limit consideration of anticipated sedimentation to surface water evaluations for reservoir supplies rather than all surface water supplies. The language in 31 TAC §357.32(c) has been revised in response to comments.

Description of Threats in the Regional Water Planning Area

This rulemaking included non-substantive changes, including revising the occurrence of “will” with “shall.” For section 31 TAC §357.30(12), relating to requirements for regional water planning groups to discuss how water managements strategies will be addressed or affect identified threats to agricultural and natural resources, a comment was received stating that no mandatory duty was associated with the proposed change. The language in 31 TAC §357.30(12) has been revised in response to comments.

Changes made due to administrative errors in the draft proposal are summarized below.

This rulemaking revised notice requirements consistent with HB 3357, 84th Legislative Session. Subsection 357.21(c)(4)(C) is revised to correct a typographical error that did not make sense as proposed. The adopted language is reflective of the proposal section by section discussion and removes language regarding positing notice with the county clerk.

This rulemaking grouped public notice requirements for the application for regional water planning funding into 31 TAC §357.21(e) to correct an inadvertent error from the August 2012 rule revision. As part of this regrouping, rule language inadvertently remained for funding-specific notification as 31 TAC §357.21(d)(5)(E) and (F). These effected portions have been deleted and renumbered for the final rule considered for adoption but do not add or remove any notice requirements.

This rulemaking defined the term Water Management Strategy Project and, consistent with the definition of the term Water Management Strategy Project, Chapter 357 was revised to add “and Water Management Strategy Projects” to specifically require regional water planning groups to identify and evaluate water management strategy projects in regional water plans. This addition was inadvertently omitted from 31 TAC §357.45(b)(4). The language in 31 TAC §357.45(b)(4) has been revised to correctly add reference to Water Management Strategy Projects.

RECOMMENDATION

The Executive Administrator recommends approval of this item.

Attachment: Adoption of new rules and amendments for publication in the *Texas Register* - Chapter 357.

The Texas Water Development Board (“TWDB” or “board”) adopts with no changes amendments to §§357.11, 357.12, 357.20, 357.22, 357.33, 357.34, 357.40, 357.42 - 357.44, 357.50, 357.51, 357.60, 357.62, and 357.64, relating to the regional water planning process. The board adopts with changes amendments to §§357.10, 357.21, 357.30 - 357.32, 357.35, and 357.45, relating to the regional water planning process. New §357.46 is adopted.

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

The purpose of the amendments is to implement legislative changes from Senate Bill (SB) 1101, 84th Legislative Session, House Bill (HB) 4, 83rd Legislative Session, and HB 3357 and HB 30, 84th Legislative Session; improve the planning process and increase flexibility in planning; reduce certain unessential reporting requirements; address stakeholder concerns raised during the previous planning cycle; standardize language; and clarify rules and refine definitions to make them more understandable and user-friendly. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter A. General Definitions.

Section 357.10. Definitions and Acronyms.

The adopted amendments to 31 Texas Administrative Code (TAC) §357.10 (relating to Definitions and Acronyms) adopted multiple changes to existing definitions and definitions for multiple new terms, as well as capitalization of defined terms as reflected throughout the adopted chapter revision. The amended and new definitions are intended to clarify the meanings of terms commonly used in the regional and state water planning process. The section has been re-numbered to reflect the addition of new definitions.

The definition of "Agricultural Water Conservation" is added to clarify this commonly-used water management strategy (WMS) in the state and regional water plans. Title 31 TAC §363.1302 defines agricultural water conservation, and the adopted amendment references that definition.

The definition of "Availability" is revised to clarify its meaning and distinguish "Availability" from "Existing Water Supply". The distinction being that availability is the total amount of raw water that could be produced from a water source during drought of record conditions, while existing water supply is the amount of that water that is physically and legally available for use by a water user group (WUG).

The discussion of "consistency between a regional water plan (RWP) and a desired future condition" is relocated to 31 TAC §357.32(d)(1) and adds references to a modeled available groundwater (MAG) peak factor. The current definition requires an existing water supply or a recommended WMS to not exceed modeled available groundwater to be consistent. The adopted amendment modifies the measure of consistency to include a MAG peak factor greater

than the modeled available groundwater value or to allow for other availability estimates where there is no modeled available groundwater value or where 31 TAC §357.32(d)(2) applies.

The definition of “County-Other” is revised to accommodate the revised definition of “Water User Group” under the approach of utility-based planning as delineated by water provider service areas.

The definition of "Drought Management Water Management Strategy" is added to clarify the term as used in practice since regional water planning groups (RWPGs) evaluate and recommend drought management measures as quantified strategies in RWPs.

The definition of "Drought of Record" is revised to add the words "historical records indicate that" and "would have" to clarify that a drought of record is based on historical records and modeling that indicate a period of least amount of water supply.

The definition of "Existing Water Supply" is revised to clarify its meaning and more clearly distinguish it from "Availability". The distinction being that availability is the total amount of raw water that could be produced from a source during drought of record conditions, while existing water supply is the amount of that water that is physically and legally available for use by a WUG.

The definition of "Firm Yield" is revised to specify that a firm yield calculation must assume that applicable permit conditions are met. Adding this requirement is consistent with the firm yield definition in Texas Commission on Environmental Quality rules, 30 TAC §297.1(20). The definition is also amended to replace the word "reasonable" with "anticipated" before "sedimentation rates" because "anticipated" more accurately describes the use of sedimentation rates in the planning process due to its predictive nature.

The definition of "Major Water Provider", or "MWP", is added to define this category of water supplier. A MWP is a significant public or private WUG or wholesale water provider (WWP), whose significance is determined by the RWPG, and provides water for any water use category in a regional water planning area (RWPA). Major water provider is defined because it is a category of water provider that is adopted to be used for reporting purposes in regional and state water planning instead of previous WWP-based reporting requirements. Wholesale water providers were previously defined based upon a static volumetric threshold of water supplied that resulted in fluctuations in categories during each planning cycle due to changes in reported annual water use. The revision gives RWPGs more flexibility in deciding on which large water provider they want to report information in their RWPs and facilitates the use of a single, stable list of entities.

The term is added in response to concerns from several regions. Issues presented by planning groups over past planning cycles included: 1) Smaller regions only had one WWP in the entire region due to the volumetric threshold of the previous WWP definition, yet they felt that there were other significant water providers in the region that didn't meet the reporting threshold of a WWP; 2) Some larger regions had several entities on the WWP 1,000 acre-feet per year threshold that would fall on and off the list during or between planning cycles due to reported

historic use and there was a lack of consistency in reporting between plans; and 3) Some regions had some WWP's that met the 1,000 acre-feet per year threshold, so they were required to report on the entity, yet the RWPG did not consider the entity was a particularly significant water provider in the region. The term is also added to regional water planning reporting requirements in 31 TAC §§357.30(4), 357.31(b) and (f), 357.32(g), 357.33(b),(d),and (e), and 357.35(g).

The definition "Modeled Available Groundwater (MAG) Peak Factor" is added, along with an amendment to §357.32(d), to provide flexibility in planning for groundwater availability while ensuring consistency with long-term desired future conditions and integrity of the planning process. The definition specifies that a MAG peak factor would be expressed as a percentage of modeled available groundwater (e.g., greater than 100 percent) and would represent the quantified annual groundwater availability temporarily available, for planning purposes. The MAG peak factor may accommodate anticipated fluctuations in pumping between wet and dry periods or may account for other shifts in the timing of pumping while remaining consistent with desired future conditions. This is a quantified groundwater availability for pumping, not permitting, to be utilized for planning purposes only, and the adopted rule specifies that a MAG peak factor is not intended as a limit to permits or as guaranteed approval or pre-approval of any future permit application.

The definition of "Planning Decades" is added to clarify the significance of demands, supplies, needs, and strategy volumes as reported in regional and state water plans (2020, 2030, 2040, etc.). The new definition clarifies that data associated with a particular year represent conditions occurring in that single year. A WMS associated with a particular decade year "snapshot" (e.g. 2030) in a regional or state water plan would come online before or in that year.

The definition of "RWPG-Estimated Groundwater Availability" is added along with an amendment to §357.32(d) to implement changes required by Senate Bill (SB) 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health of Certain Regional Water Plans) and to reflect the planning practice of groundwater availability estimation for areas where no desired future condition has been adopted. Senate Bill 1101 amended Texas Water Code (TWC), §16.053(e)(2-a) to require an RWPG with no groundwater conservation districts (GCDs) within its regional water planning area (RWPA) to determine the supply of groundwater for regional planning purposes.

The definition of "Reuse" is added to clarify this commonly-used WMS in the state and regional water plans. Board rule, 31 TAC §363.1302(14), defines reuse, and the adopted amendment references that definition to make it consistent with the Board's State Water Implementation Fund for Texas (SWIFT) rules.

The definition of "State Water Planning Database" is added to explain that the database, maintained by TWDB, is used to collect, store, and disseminate regional and state water planning data such as population, water demand projections, existing water supplies, WMSs, and capital projects.

The definition of "Unmet Water Need" is added to clarify the portion of a water need that is not met by recommended WMSs in a regional or state water plan. The new definition of "Unmet Water Need", along with the new definition for "Water Need", are intended to clarify the use of these terms in the water planning process.

The definition of "Water Conservation Measures" is revised to add language from the definition of "Water Conservation" in 31 TAC §363.1302(18) to make it more consistent with the Board's State Water Implementation Fund for Texas rules. The amendment also adds new language to clarify that, for planning purposes, water conservation measures do not include projects that develop new supplies, such as new reservoirs or aquifer storage and recovery projects. This clarification is adopted to reduce confusion regarding the delineation between strategies or projects which conserve existing supplies and strategies or projects that develop new supplies, for example, by storing water for later use.

The definition of "Water Conservation Plan" is revised to remove the words "more than" from the first sentence because those words are redundant and inconsistent with the language in TWC, §11.1271. The revised definition also adds a period at the end of the first sentence.

The definition of "Water Conservation Strategy" is added to discuss a WMS that saves quantified volumes of water using water conservation measures.

The definition of "Water Demand" is added to discuss the volume of water that a WUG would require during drought of record conditions for its anticipated domestic, public, and/or economic activities.

The definition of "Water Management Strategy", or "WMS", is revised to remove the words "or specific project" to distinguish between a "Water Management Strategy" and a "Water Management Strategy Project", which is defined in adopted §357.10(39). The revision is intended to clarify that a strategy is a plan to meet a water need of a WUG, which may or may not require capital projects to be implemented.

The definition of "Water Management Strategy Project", or "WMSP", is added to distinguish between a "Water Management Strategy Project" and a "Water Management Strategy". As discussed above, a water management strategy is a plan to meet a water need; however, a water management strategy project is an infrastructure project that may be required to implement a water management strategy. The adopted definition specifies that water management strategy projects have non-zero capital costs and would develop, deliver, or treat additional water supply volumes, or conserve water for water user groups or wholesale water suppliers. The adopted definition also clarifies that one water management strategy project may be associated with multiple WMSs. For example, the construction of a single reservoir project may support multiple water user group strategies that use that new supply.

The definition of "Water Need" is added to explain the difference between projected water demands and existing water supplies. When existing water supply is less than the projected demand, there is the potential for a water shortage, or water need. The new definition for water need is intended to clarify the use of the term in the water planning process.

The definition of "Water User Group", or "WUG", is revised to be more consistent across all municipal water users and to reflect a utility-based planning approach. The current definition qualifies municipal water user groups on both a population threshold (500) for cities and a different, volumetric threshold (280 acre-feet) for non-city water utilities, creating a significant disparity between the size thresholds of the included entities. The revision creates a standard, volume-based criterion of 100 acre-feet per year for municipal retail public utilities and water systems serving institutions or facilities owned by the state or federal government. The adopted 100-acre-foot threshold is designed to put rural and urban municipal use on an even footing regarding who is planned for and to increase the rural population that is planned for in discreet water user groups, as opposed to being classified as county-other. The 100-acre-foot threshold will result in what is considered a manageable increase in the number of WUGs for which population and water demands must be projected for by the agency and planned for by RWPGs using existing resources.

The adopted §357.10(41)(A) identifies privately-owned utilities that provide an average of 100 acre-feet of water per year for municipal use as WUGs. Under this adopted revision, the requirement is an average of 100 acre-feet per year of municipal water for all water systems of a privately-owned utility, which is intended to address the nature of such utilities to be composed of numerous small water systems spread out across counties and regions. Using the average municipal use instead of the total use is intended to include privately-owned utilities of a sufficient size to be included in planning.

The adopted §357.10(41)(B) identifies water systems serving institutions or facilities owned by the state or federal government that provide more than 100 acre-feet of water per year for municipal use as WUGs.

The adopted §357.10(41)(C) stipulates that all other retail utilities not covered in subsections (A) and (B) that provide more than 100 acre-feet of water per year for municipal use are also included WUGs. The adopted language in subsection (C) is intended to capture non-profit water supply corporations or water utility districts, as well as any other retail public utilities not covered by subchapters (A) and (B).

The adopted rule also amends the definition of WUG to require that the inclusion of a collective reporting unit as water user group must be requested by the RWPG. This change is adopted as §357.10(41)(D).

The definition of "Wholesale Water Provider", or "WWP", is revised to eliminate the annual 1,000 acre-foot delivery or sales threshold and stipulate that the RWPG will identify the wholesale water providers in its region to be evaluated for plan development. The definition also inserts language to specify that a wholesale water provider expects to deliver or sell treated or raw wholesale water to water user groups or other wholesale water providers. The intent of this adopted revision is to provide flexibility to RWPGs and to clarify how wholesale water providers are designated.

Subchapter B. Guidance Principles and Notice Requirements.

Section 357.21. Notice and Public Participation.

Section 357.21 is revised to implement changes consistent with HB 3357, 84th Legislative Session. HB 3357 (relating to Permitted Methods for Certain Political Subdivisions to Post Notice of a Meeting) amended Texas Government Code, §551.053(a) and (c), allowing a political subdivision or district to post notice of its meetings on its website as an alternative to providing notice to the county clerk of the county in which its administrative offices are located, which was the previous statutory requirement. While an RWPG is not a political subdivision or district, the administrators for the planning groups are, and a number of them had asked for flexibility in notice requirements.

Subsection 357.21(b)(4) is revised to add the words “in writing” to clarify that notice to RWPG members, and to people and entities who have requested notice, must be made in writing, which includes by email notification. As a result of this change, the words "either in writing or email as requested by the person or entity" are removed from §357.21(b)(4)(B) because they are no longer necessary. Subsection 357.21(b)(4) is also amended to remove Subsection (C), which requires the RWPG to provide notice to each county clerk in the regional water planning area (RWPA). The removal of Subsection (C) is adopted to make the rule consistent with HB 3357, which gives a political subdivision or district the option to give notice to the county clerk in the county where its administrative offices are located, or post the notice on its website.

Subsection 357.21(b)(5)(A) is revised to add language allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to each county clerk in its RWPA and to remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own. Although HB 3357 allows a political subdivision or district to give notice to the county clerk in the county where its administrative offices are located if it does not choose to post the notice on its website, adopted §357.21(b)(5)(A) requires RWPGs to give notice to each county clerk in its RWPA should it choose not to post on its website or the website of the host political subdivision. The intent of this distinction is to give RWPGs some of the flexibility granted political subdivisions and districts by HB 3357 without unduly limiting notice to the public.

Subsection 357.21(c)(4) is revised to add the words “in writing” to clarify that notice to RWPG members, and to people and entities who have requested notice, must be made in writing. As a result of this change, the words "either in writing or email as requested by the person or entity" are removed from §357.21(c)(4)(B) because they are no longer necessary. Subsection 357.21(c)(4) is also amended to remove Subsection (C), which requires the RWPG to provide notice to each county clerk in the RWPA. The removal of Subsection (C) is adopted to make the rule consistent with HB 3357, which gives a political subdivision or district the option to give notice to the county clerk in the county where its administrative offices are located, or post the notice on its website. Subsection (C), as adopted, is revised to correct a typographical error that did not make sense as proposed. The adopted language is reflective of changes described in the proposal section by section discussion.

Subsection 357.21(c)(5)(A) is revised to add language allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to each county clerk in its RWPA and to remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own. Although HB 3357 allows a political subdivision or district to give notice to the county clerk in the county where its administrative offices are located if it does not choose to post the notice on its website, adopted §357.21(c)(5)(A) requires RWPGs to give notice to each county clerk in its RWPA should it choose not to post on its website or the website of the host political subdivision. The intent of this distinction is to give RWPGs some of the flexibility granted political subdivisions and districts by HB 3357 without unduly limiting notice to the public.

Subsection 357.21(d)(1) is revised to remove the words "requesting research and planning funds from the board" so the notice requirements in §357.21(d) would no longer apply to that action. Subsections 357.21(d)(2)(B) and 357.21(d)(4) are also adopted to be removed for the same reason. The words "as follows:" are adopted to be removed and §357.21(d)(2)(A) is consolidated into §357.21(d)(2), since the adopted deletion of §357.21(d)(2)(B) would eliminate the need for a list. Subsection 357.21(d) is adopted to be re-numbered to accommodate the deletions. Before rule amendments were made in August 2012, requesting research and planning funds did not require that notice be posted on the Secretary of State's website or in the *Texas Register*. The 2012 rule amendments inadvertently added those posting requirements, and this adopted amendment would remove them. To specify the notice requirements for requesting research and planning funds from the board, the board adopts new §357.21(e), which will be discussed below.

Subsection 357.21(d)(5) is revised by renumbering it to §357.21(d)(4) and by substituting the words "electronic media" for the words "an electronic disc, or drive" in the list of acceptable formats. The term electronic media is inserted because it is a catch-all term for future formats that may be used by an RWPG to transmit copies of an initially prepared plan (IPP). Electronic media includes electronic discs or drives, so this adopted change does not limit the use of those formats, but instead, expands the present or future formats that may be used. The format used is still limited by the capability of the facility being provided the IPP. Subsection 357.21(d)(4) is also revised to add the words "through an internet web link" to the list of acceptable formats that an RWPG may use to provide copies of its IPP. As with the other adopted revisions to the list of acceptable formats, the intent is to expand the present and future formats that may be used. Subsection 357.21(d)(4) is also revised to specify that the public inspection requirement only applies to IPPs. This change is adopted to clearly reflect the statutory requirement in TWC, §16.053(i).

This rulemaking grouped public notice requirements for the application for regional water planning funding into the new §357.21(e). As part of this regrouping, rule language inadvertently remained for funding-specific notification as §357.21(d)(5)(E) and (F). The text that had been in §357.21(d)(5)(E) was no longer necessary; its purpose was to identify requirements that did not apply to funding requests, which have moved to §357.21(e). The requirements formerly in §357.21(d)(5)(E)(i) and (ii) are renumbered as adopted §357.21(d)(5)(E) and (F). The requirement previously numbered §357.21(d)(5)(F) is deleted due to the adoption of new §357.21(e), designating notice requirements for RWPGs that are

requesting research and planning funds from the board, which is discussed below. These deletion and renumbering changes in §357.21(d)(5) are done to clarify notice requirements and do not add or remove any rule requirements.

Subsection 357.21(d)(7) is renumbered to §357.21(d)(6) and revised to add language to adopted §357.21(d)(6)(A) allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to each county clerk in its RWPA and remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own. Although HB 3357 allows a political subdivision or district to give notice to the county clerk in the county where its administrative offices are located if it does not choose to post the notice on its website, adopted §357.21(d)(6)(A) requires RWPGs to give notice to each county clerk in its RWPA should it choose not to post on its website or the website of the host political subdivision. The intent of this distinction is to give RWPGs some of the flexibility granted political subdivisions and districts by HB 3357 without unduly limiting notice to the public.

Adopted §357.21(d)(7)(C)(ii) is amended to delete references to "scope of work development" and "application for funding". These references are to RWPG functions with notice requirements covered by other rules. The notice requirements for scope of work development are in §357.21(b) and notice requirements for applications for funding are in the newly adopted §357.21(e). These deletions in §357.21(d)(7) are done to clarify notice requirements and do not add or remove any rule requirements.

Section 357.21 is revised to add new §357.21(e) designating notice requirements for RWPGs that are requesting research and planning funds from the board. Rule changes in August 2012 inadvertently required that notice of RWPG requests for research and planning funds from the board be posted on the Secretary of State's website and in the *Texas Register*. The intent of the adopted change is to restore the previous notice requirements.

Section 357.22. General Considerations for Development of Regional Water Plans.

Subsection 357.22(a) is revised to implement a change to TWC, §16.053(e)(5)(A), made by SB 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health of Certain Regional Water Plans). The SB 1101 change to §16.053(e)(5)(A) requires that each RWPG must submit an RWP that includes consideration of potential impacts on public health, safety, or welfare in the state. Subsection 357.22(a) is revised to reflect the change to §16.053(e)(5)(A) by inserting "potential impacts on public health, safety, or welfare" into the list of factors considered by the RWPG in developing its plan as §357.22(a)(13) and the list is renumbered to reflect the addition. Other adopted rule changes resulting from SB 1101 are discussed below in §357.32.

Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations.

Section 357.30. Description of the Regional Water Planning Area.

Subsection 357.30(4) is revised to change the requirement from identifying “wholesale water providers” to identifying “major water providers”. The revision gives RWPGs more flexibility in deciding on which large water providers they want to report information in their regional water plans.

Section 357.31. Projected Population and Water Demands.

Subsection 357.31(b) is revised to require RWPGs to report projected water demands for MWPs instead of WWPs. The adopted rule would also remove the requirements that RWPGs report projected water demands of WWPs for each county or portion of a county in the RWPA and for each river basin within each county or portion of a county. This change is adopted to clarify and ensure consistency of reporting requirements in the RWPs and to remove nonessential reporting.

The revision also changes the RWPG's requirement in §357.31(c) from "report" to "evaluate" regarding contractual obligations of WUGs and WWPs beyond the projected demands for those entities. The adopted rule specifies that the evaluation of contractual obligations is limited to determining the amount of water secured by the contract and the duration of the contract. This change is adopted to retain required analysis during plan development yet remove nonessential reporting requirements associated with adopted changes to §357.31(b).

Subsection 357.31(d) is revised to change the requirement from "determine and report" to only "report" how changes in plumbing fixtures would affect municipal water demands. In practice, the effects of plumbing code savings are currently determined by the TWDB, and RWPGs only report them in the RWP. The adopted change is intended to more accurately reflect actual practice and expectations.

The adopted rule would also change §357.31(f) reporting requirements for projections to present data for MWPs rather than WWPs. This change is adopted to clarify and ensure consistency of reporting requirements in the RWPs and to remove nonessential reporting.

Section 357.32. Water Supply Analysis.

Subsection 357.32(c) is revised to reorganize, improve, and clarify the requirements and specify how evaluations of run of river surface water (water available for diversion when stream flow levels are sufficient) should be conducted in line with planning practice. Language regarding evaluation of existing stored surface water is moved from the beginning of §357.32(c) to new §357.32(c)(1) and the word "stored" is added to clarify that the requirement applies to stored water. Subsection 357.32(c)(2) is added to specify that evaluation of existing run of river surface water availability for municipal WUGs must be based on the minimum monthly diversion amounts that are available 100% of the time, if that run of river supply is the only supply for the municipal WUG. The revision is intended to clarify and improve the requirements for evaluation of existing surface water supplies by RWPGs by specifying more realistic and sensible modeling criteria that must be followed in evaluating water supply during drought of record conditions.

Subsection 357.32(c) is revised to clarify water availability evaluation requirements for existing surface water. In the first sentence of adopted amended §357.32(c), the plural "analyses" is inserted to replace the singular "analysis" because RWPGs perform multiple water supply analyses in the development of the RWP. In the second sentence of revised §357.32(c), the words "as the default approach for evaluating existing supplies" are added at the beginning of the sentence to clarify that the listed assumptions are to be used unless a variance is approved by the EA.

Subsection 357.32(c) is revised to include the words "better, more representative" to replace the word "other". The intent of this adopted change is to emphasize to RWPGs that they should use the best available site-specific information and the most appropriate modeling assumptions for planning. The RWPGs are encouraged to consider using assumptions that are appropriate for evaluating existing supplies in their planning areas. The words "and approved in writing by the EA" are included at the end of the last sentence of §357.32(c) to clarify and reinforce that using information different than that available from TCEQ requires written approval from the EA.

The availability requirements for existing supplies of stored and run of river water are split out from §357.32(c) as §357.32(c)(1) and §357.32(c)(2) respectively. Adopted §357.32(c)(2) clarifies that availability of existing run of river supplies for municipal WUGs with run of river supplies as their sole source of water will be based on minimum amounts available for diversion in 100% of months in the TCEQ Water Availability Model period of record.

Subsection 357.32(d) is revised to replace "Board" with "EA" in reference to issuance of modeled available groundwater volumes. The existing rule incorrectly states that modeled available groundwater volumes are issued by the board; the adopted change is intended to correct the statement.

Subsection 357.32(d)(1) is added to clearly stipulate that for an RWP to be consistent with a groundwater desired future condition, the groundwater availability in the RWP must not exceed the modeled available groundwater amount associated with the desired future conditions for the relevant aquifers, unless there is no modeled available groundwater and §357.32(d)(2) applies, or as modified by a MAG peak factor under §357.32(d)(3). The adopted rule further reiterates that the RWPG may use either the desired future condition adopted as of the date of the most recently adopted state water plan, or a desired future condition adopted on a subsequent date.

SB 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health in Certain Regional Water Plans), amended TWC §16.053(e)(2-a) to require an RWPG with no GCDs within its RWPA to determine the supply of groundwater for regional planning purposes. The bill stipulates that the board shall review and approve that the groundwater supply determined by the RWPG is physically compatible with desired future conditions for the relevant aquifers in the groundwater management area (GMA) that are regulated by GCDs. The bill requires that the review of physical compatibility be done using the board's groundwater availability models. At this time, the bill only applies to the North East Texas RWPG (Region D) because it is the only RWPG in the state with no GCDs in its RWPA as of the date of this adopted revision. New §357.32(d)(2) is added to implement SB 1101. The adopted rule states that the RWPG shall

determine groundwater availability for planning purposes for an RWPA with no GCDs; the board shall review and approve that the availability is physically compatible with desired future conditions in relevant aquifers; and the Executive Administrator (EA) shall use the board's groundwater availability models to conduct the physical compatibility review. The intent of the adopted rule is to implement SB 1101.

Subsection 357.32(d)(3) is added to allow RWPGs to request use of a MAG peak factor to accommodate temporary increases in annual availability. TWC, §36.1132 requires management of groundwater production on a long-term basis which, in practice, may include variations in availability from year to year in response to relative wet and dry periods. Additionally, most of the modeled available groundwater values were developed for long-term average, not drought of record, conditions.

The new §357.32(d)(3) would allow RWPGs to request the application of a MAG peak factor, in the form of a percentage of a modeled available groundwater value (e.g., greater than 100 percent) to better reflect, for regional water planning purposes, the quantified, temporary, volume of groundwater available for pumping. The MAG peak factor may accommodate anticipated fluctuations in pumping between wet and dry periods or may account for other shifts in the timing of pumping while remaining consistent with desired future conditions. Because a MAG peak factor is applied to MAG values, it is not applicable to non-MAG groundwater availabilities. The purpose of new §357.32(d)(3) is to provide relief from the stricter limit on groundwater availability in current §357.32(d). The intent is to allow regional water plans to more accurately reflect the capacity for groundwater pumping, under drought conditions, where appropriate and approved by relevant regulatory or permitting districts, while maintaining consistency with the desired future conditions and maintaining the integrity of the planning process.

A MAG peak factor, under adopted §357.32(d)(3), would be submitted to the board for review in the form of a percentage of a modeled available groundwater value (e.g., greater than 100 percent). If approved, the MAG peak factor would be applied to the associated modeled available groundwater volume in the state water planning database to calculate the modified availability volume, for a specific location, that would be used by RWPGs for planning.

Subsection 357.32(d)(3) states that the EA shall consider a request from an RWPG to apply a MAG peak factor. The adopted rule explains that the MAG peak factor must be expressed as a percentage (e.g., greater than 100 percent) of the modeled groundwater availability value to accommodate temporary increases in availability.

The new §357.32(d)(3)(A) stipulates that the request must include written concurrence from the GCD, and representatives of the groundwater management area. If no GCD exists in the particular aquifer-region-county-basin-split, then written approval will be provided by representatives of the groundwater management area. Due to the nature of desired future conditions development relying upon agreement of all groundwater management area representatives, the adopted rule requires that the request include written approval from the groundwater conservation district, if a groundwater conservation district exists in the particular aquifer-region-county-basin split, and from representatives of the groundwater management

area. Both groundwater conservation district and groundwater management area representative approvals are included in the rule to maintain the integrity of the joint groundwater planning process and to ensure the achievement of desired future conditions.

New §357.32(d)(3)(B) requires that the request must also provide its technical basis, including sufficient detail to support evaluation by the relevant GCD, groundwater management area, and the EA. New Subsection 357.32(d)(3)(C) requires that the request must document how the temporary increase would not prevent the GCD from managing groundwater resources to achieve desired future conditions. Planning guidance will document these supporting data to include in requests.

Subsection 357.32(g) is amended to change the reporting requirement for evaluation results under §357.31(a) and (b) from reporting by WUG and WWP to reporting by WUG and MWP.

Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.

Section 357.33 is revised to clarify reporting requirements and ensure that RWPGs report and present surpluses, needs, and secondary needs for the most significant water suppliers as identified by the RWPGs.

Subsection 357.33(b) is revised to replace the requirement to report surpluses or needs for WWPs with MWPs. The requirement to report surpluses and needs for WUGs would remain unchanged.

Subsection 357.33(d) is revised to change reporting of results for WUGs and WWPs to reporting for WUGs and MWPs.

Subsection 357.33(e) is revised to change the requirement to present secondary water needs volumes from presenting for WUGs and WWPs to presenting for WUGs and MWPs.

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Consistent with the adopted definition of "water management strategy project", Section 357.34 is revised to add "and Water Management Strategy Projects" to its title and add the words "and the WMSPs required to implement those strategies" to §357.34(a) to specifically require RWPGs to identify and evaluate WMSPs in RWPs. Similarly, the revision inserts the words "and associated WMSPs" in renumbered §357.34(e) and inserts the words "and WMSPs" in renumbered §357.34(f).

Subsection 357.34(c)(2) is revised to specify seawater and brackish groundwater as desalination WMSs that RWPGs must consider when identifying potentially feasible strategies during the development of RWPs. The adopted revision is to implement changes consistent with House Bill (HB) 30, 84th Legislative Session. HB 30 (relating to the Development of Seawater and Brackish Groundwater) which specifically requires that seawater desalination and brackish groundwater desalination be considered by RWPGs.

Subsection 357.34(d) is added to clarify that all recommended WMSs and WMSPs that are entered into the state water planning database and prioritized by RWPGs must reduce water consumption, reduce water loss or waste; improve water use efficiency; or develop, deliver, or treat additional water supply volumes to WUGs or WWP in at least one planning decade such that during drought of record conditions water is available. The language also stipulates that WMSs that do not meet those requirements must be identified and presented separately in the RWP and are not eligible for SWIFT funding. Examples of WMSs and WMSPs that do not meet the requirements of §357.34(d) could include, but are not limited to, new retail distribution facilities that do not convey additional water supplies; new wells required to replace aging wells; and maintenance of, or upgrades to, existing equipment or facilities that do not increase volumetric water supply.

The intent of adopted §357.34(d) is to clarify a SWIFT eligibility requirement for WMSs and WMSPs and to accommodate the inclusion of WMSs or WMSPs to facilitate permitting or other activities associated with other agencies that may not conserve or develop supplies under drought of record conditions.

A typographical change is made to §357.34(g)(2)(C) to correct the reference to Texas Water Code §11.085. The previous text incorrectly appeared as §11.085(1), or "one". The adopted text is §11.085(l), or lower case "L", which is the correct reference. This amendment does not change any requirements under the rules.

Subsection 357.34 is renumbered to accommodate the addition of §357.34(d).

Section 357.35. Recommended and Alternative Water Management Strategies and Water Management Strategy Projects.

Section 357.35 is revised to add the words "and Water Management Strategy Projects" to the end of the title. The purpose of the adopted amendment is to require RWPGs to recommend WMSPs separately from WMSs.

Section 357.35 was also revised to add the text "and water management strategy projects required to implement those WMSs" and "and Water Management Strategy Projects" to §357.35(a).

Subsection 357.35(g)(1) is revised to remove the requirement to report WWP data split by river basins, counties, or RWPA. This change is adopted to remove unessential reporting requirements in the RWPs. Adopted §357.35(g)(1) and §357.35(g)(2) require RWPGs to report WMS evaluations and management supply factors by MWP instead of WWP.

Subsection 357.35(g)(2) is revised to change the term "safety factor" to "management supply factor" and clarify that the board calculates these values and provides them to the RWPGs to include in their RWPs for reporting purposes only.

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

Section 357.40. Impacts of Regional Water Plan.

Section 357.40(b) is revised to renumber references to correctly reflect revisions from Section 357.34.

Section 357.44. Infrastructure Financing Analysis.

Section 357.44 is revised to add the words "and associated WMSPs" to specify that reporting of infrastructure financing must also include WMSPs.

Section 357.45. Implementation and Comparison to Previous Regional Water Plan.

This rulemaking defined the term Water Management Strategy Project and, consistent with the definition of the term, Chapter 357 was revised to add "and Water Management Strategy Projects" to specifically require regional water planning groups to identify and evaluate water management strategy projects in the regional water plans. This addition was inadvertently omitted from §357.45(b)(4). Section 357.45(b)(4) is revised to require RWPGs to briefly summarize how recommended and alternative WMSPs differ from the previous RWP. This addition does not add or alter any requirements, it merely clarifies how previous requirements are now categorized in the planning process.

Section 357.46. Prioritization of Projects by Regional Water Planning Groups.

New §357.46 is added to require each RWPG to prioritize the recommended WMSPs in its RWP and submit the prioritization separately with its adopted RWP. The adopted new section specifies that the prioritization of projects must be performed in accordance with the uniform standards developed by the stakeholder committee established under TWC, §15.436(c), in place at the time it adopts its RWP. Prioritization of WMSPs is necessary to implement HB 4, 83rd Legislative Session, which requires prioritization of recommended projects for SWIFT.

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

Section 357.50. Adoption, Submittal, and Approval of Regional Water Plans.

Subsection 357.50(a) is revised to correctly reference the appropriate subsection of the rule.

Subsection 357.50(g)(2)(B) is revised to include the words "state water" in front of "planning" in the first sentence and insert "state water planning" in front of "database" in the second sentence. These changes are intended to specify that the rule refers to the state water planning database, as that term is defined in §357.10 of this rule revision.

A new Subsection §357.50(j) is added to address the inclusion of unmet municipal water needs in RWPs. The intent of the adopted new subsection is to explain the basic elements that must be included in an RWP to justify including unmet municipal water needs. The rule requires that, in order for the board to consider approval of an RWP with unmet municipal water needs, the

RWP must provide adequate justification including: document that the RWPG considered all potentially feasible WMSs and explain why additional conservation and/or drought management were not recommended to address the need; describe how municipal WUGs will protect public health, safety, and welfare in a repeat of the drought of record; and explain whether the unmet municipal needs could be addressed with an amendment before the next IPP. The new Subsection is inserted after §357.50(i), as §357.50(j), and the rest of the Section re-numbered.

Section 357.51. Amendments to Regional Water Plans.

Subsection 357.51(a)(2) is revised to include language to more explicitly describe how the board considers and acts upon a petition to amend an RWP, if the RWPG does not act upon the petition. The adopted amendment inserts language specifying that within 90 days after a request by a political subdivision, the RWPG is required to provide a written explanation to the EA if it does not amend its plan. The adopted amendment also inserts language specifying that at the public meeting, which is required by existing rule, the board may direct the RWPG to amend its RWP based on the local political subdivision's request.

Subsection 357.51(b) is revised by removing Subsection 357.51(b)(3)(B), which currently requires that a proposed major amendment shall not produce unmet needs to the adopted RWP. This adopted change is intended to make requirements for major amendments consistent with, and no more restrictive than, the requirements for adoption of the RWP, which may contain unmet needs. As a result of the deletion of §357.51(b)(3)(B), the rest of §357.51(b)(3) is renumbered.

Subsection 357.51(c)(1) is revised to remove the words "Minor Amendment to RWP" because they are unnecessary and redundant in the context of the rule language.

Subsection 357.51(c)(2) is revised to add a requirement specifying that a minor amendment "does not increase unmet needs or produce new unmet needs in the adopted RWP". The intent of this adopted new requirement is to distinguish minor amendments from major amendments and RWP adoption, both of which may include unmet needs. The new requirement is in §357.51(c)(2)(C), and the rest of the Subsection is renumbered.

Subsection 357.51(e) is revised to specify how RWPGs may substitute alternative WMSs for recommended WMSs. The board amends adopted §357.51(e) to insert the words "without over-allocating any source". The adopted change is intended to specify that when substituting an alternative WMS for a recommended WMS, the substitution cannot result in an over-allocation of a source in the same manner that sources may not be over-allocated in adopted plans.

Subchapter F. Consistency and Conflicts in Regional Water Plans.

Section 357.60. Consistency of Regional Water Plans.

Subsection 357.60(b)(1) is revised to replace the words "a current" with the words "an existing" because "an existing" is more accurately descriptive in the context of the rules and add the

words "or water source" after the words "water supply" to clarify that a project can be an enhancement to an existing water source to meet the parameters for consistency with an RWP.

Subsection 357.60(b)(2) is revised to replace the word "and" with "or" because in practice a project only needs to meet one of the requirements to be considered consistent with an RWP. These amendments to §357.60(b) are intended to clarify the parameters for determining consistency of a project with an RWP.

Non-substantive changes are made to the following sections: §§357.11, 357.12, 357.20, 357.40, 357.42, 357.43, 357.45, 357.62, and 357.64, relating to the regional water planning process.

REGULATORY IMPACT ANALYSIS

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

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

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning. The adopted rule would substantially advance this stated purpose by adding language related to legislative changes, clarifying definitions, and incorporating agency and stakeholder input into the TWDB rules related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding the regional water planning process. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

A public hearing was held on August 24, 2016, at 1:00 p.m. in Room 170 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. One speaker representing two entities made oral comments at the public hearing.

Written comments were received from: Brazos River Authority (BRA); Central Texas Water Coalition (CTWC); City of Austin; City of Marble Falls; Freese and Nichols, Inc. (FNI); Hays Caldwell Public Utility Agency (HCPUA); High Plains Underground Water Conservation District (HPWD); Hill Country Alliance (HCA); Holland Groundwater Management Consultants, LLC (HGMC); Lone Star Groundwater Conservation District (LSGCD); Lower Colorado River Authority (LCRA); National Wildlife Federation, the Lone Star Chapter of the Sierra Club, and the Galveston Bay Foundation (NWF, LSCSC, and GBF); Prairielands Groundwater Conservation District (PGCD); San Antonio Water System (SAWS); San Marcos River Foundation (SMRF); Texas Alliance of Groundwater Districts (TAGD); Texas Center for Policy Studies (TCPS); Texas Rural Water Association (TRWA); Water Planning Subcommittee and Surface Water Committee of Texas Water Conservation Association (TWCA); Upper Trinity Groundwater Conservation District (UTGCD); and 2,176 individuals.

GENERAL COMMENTS REGARDING REGIONAL AND STATE WATER PLANNING:

Comments

One thousand forty-six (1,046) individuals commented that water to meet environmental needs is not being addressed consistent with statutory requirements and that without addressing this important water use, the region and state plans are incomplete. These individuals commented that we won't have healthy rivers and productive coastal bays if we don't include water needed to protect the natural resources dependent on them in the goals for our planning.

One thousand one hundred thirty (1,130) individuals commented that it does not appear as if water for wildlife is one of the demands being planned for. These individuals commented that we won't have healthy rivers and productive coastal bays if we don't even include them in the goals for our planning.

One thousand forty-six (1,046) individuals commented that new regional water plans should be approved only if they specifically identify threats that inadequate river flows pose for the long-term protection of the state's fish and wildlife and other natural resources and identify measures to address those threats.

One thousand one hundred thirty (1,130) individuals commented that future regional water plans should be approved only if they specifically identify threats that inadequate river flows pose for the long-term protection of the state's fish and wildlife and other natural resources and identify measures to address those threats.

Eighty six individuals provided comments related to the environment and the need for ample clean water to support fish and wildlife and healthy rivers, bays, and their related ecosystems as well as people.

Eight individuals commented that Texas is drought-prone and subject to climate change, and the water supply must be protected to provide water for people, wildlife, rivers, and bays during dry conditions.

One thousand forty-six (1,046) individuals commented that regional water plans should plan for and include recommendations for sufficient water to protect natural resources in each planning region. These plans should also encourage robust water conservation and efficiency strategies that will allow Texas to stretch its water supply to serve both people and the environment.

Response

The Board notes that these comments are not in response to any specific proposed rule change, but rather the comments are requesting the addition of a new rule. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

Additionally, Texas Water Code (TWC) §16.053(h)(7)(C) requires that the Board approve a regional water plan (RWP) only after it determines that the plan is consistent with the long-term protection of water, agricultural, and natural resources as embodied in the guidance principles established by the Texas Water Development Board (TWDB). In those guidance principles, 31 Texas Administrative Code (TAC) §358.3(23), regional water planning groups (RWPGs) are to give consideration of environmental water needs including instream flows and bay and estuary

inflows, including adjustments to water management strategies to provide for environmental water needs including instream flows and bay and estuary needs. Such consideration must be consistent with environmental flow standards where adopted.

In addition, 31 TAC §357.34(d)(3)(B) requires the analysis of potentially feasible water management strategies regarding environmental factors and requires consideration of the Commission's adopted environmental flow standards under 30 TAC Chapter 298. If environmental flow standards have not been established, then environmental 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 Texas Parks and Wildlife Department to ensure that water management strategies are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows. These existing rules do not prohibit RWPGs from considering river flows as the commenters suggest. Additionally, 31 TAC §357.35(b) and (c) require that planning groups recommend water management strategies that are environmentally sensitive and consistent with long term protection of the state's water, agricultural, and natural resources and 31 TAC §357.30(7) requires that RWPGs describe identified threats to agricultural and natural resources due to water quantity or quality issues.

Regional water plans are developed every five years as plans for drought of record conditions. The frequency of plan development accommodates consideration of changed conditions, such as conditions or droughts worse than those of record. Water demands, water supplies, water needs, and water management strategies were evaluated under drought conditions in accordance with regional and state water planning statute and rules (TWC §16.053(a) and 31 TAC §357.34(d)). Planning groups may also address uncertainty and risks, for example, to address a drought worse than the drought of record, when developing their plans.

There are six water use categories specified in 31 TAC §357.31 for which the TWDB develops water demand projections and for which water needs are identified and water management strategies recommended. These water use categories include municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock. Environmental uses are not considered by the rule as a water user group (WUG). Environmental factors and other factors deemed relevant by the RWPGs (e.g., recreation) are considered when evaluating potentially feasible strategies. Implementation of all projects must comply with any permitting requirements related to the environment (31 TAC §357.35(e)(3)(B), as adopted). Additionally, several guidance principles speak to required environmental goals of RWPGs (31 TAC §358.3(4), (9), (22), (23), and (26)).

The TWDB supports all conservation efforts and will continue to make an effort to disseminate relevant conservation information to planning groups for their consideration. Planning rules (31 TAC §357.34(g), as adopted) require that RWPGs consider water conservation practices, including best management practices, for each identified water need. If water conservation strategies are not recommended to meet an identified need, the planning group shall document the reason in the RWP (31 TAC §357.34(g)(2)(B), as adopted). RWPGs are required to meet the planning requirements and, in doing so, the decision to recommend conservation strategies lies with the planning group.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the

TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate.

The Board encourages participation in the regional water planning process and encourages the commenters to direct these comments to the RWPGs. No changes to the rule were made in response to these comments.

Comment

One thousand forty-six (1,046) individuals commented that water conservation measures included in RWPs should be consistent with best management practices (BMPs) designed to achieve the highest reasonable level of water use efficiency. Implementing water conservation BMPs will maximize Texas' limited water supplies. Regional water planning groups should be required to review the existing municipal water conservation BMPs and recommend their use by any municipal water user group (WUG) with a projected water need.

One thousand one hundred thirty (1,130) individuals commented that water plans also need to incorporate more effective water conservation to ensure our limited water supplies are used efficiently and that water conservation measures included in RWPs should be consistent with best management practices designed to achieve the highest reasonable level of water use efficiency to help stretch our limited water supplies.

One thousand forty-six (1,046) individuals commented that minimizing water loss from leaky infrastructure is a high priority. Regional water planning groups should be required to recommend water loss control as a water management strategy for any municipal WUG with a total water loss of 10% or more.

Twelve individuals commented that conservation is critical to ensuring future water supplies for people and the environment, especially because of the increasing population of Texas, and that conservation regulation and water loss monitoring should be increased.

Response

The Board notes that these comments are not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. The TWDB supports all conservation efforts and will continue to make an effort to disseminate relevant conservation information to planning groups for their consideration. Planning rules (31 TAC §357.34(g), as adopted) require that RWPGs consider water conservation practices, including best management practices, for each identified water need. If water conservation strategies are not recommended to meet an identified need, the planning group shall document the reason in the RWP (31 TAC §357.34(g)(2)(B), as adopted). As long as RWPGs meet the planning requirements, the decision to recommend conservation strategies lies with the planning group. Over 25 percent of all recommended strategy supplies in the 2017 State Water Plan were from conservation strategies.

Neither the TWDB nor the RWPGs have authority to directly regulate the implementation of conservation measures.

Current rules (31 TAC §357.34(f)(2)(D) in current rules and 31 TAC §357.34(g)(2)(D) in these adopted rules) require that RWPGs shall consider strategies to address any issues identified in the information compiled by the TWDB from water loss audits performed by retail public utilities. No changes to the rule were made in response to these comments.

Comment

Four individuals commented that groundwater, including the effect of springflow on rivers and streams, is an important resource and must be protected through monitoring and best practices.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016. The TWDB does not have authority to regulate groundwater production or monitoring. Desired future conditions provide the basis for groundwater availability that must be used by RWPGs under planning rules. Desired future conditions established after September 2011 are required to consider other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water, pursuant to TWC §36.108. Implementation of projects must comply with any associated permitting requirements related to the environment. The Board encourages participation in the joint groundwater planning process and encourages the commenters to direct these comments to the groundwater management area representatives. No changes to the rule were made in response to this comment.

Comment

TCPS commented that the Senate Bill 1 (SB 1) water planning process requires protection of natural resources as the state determines how to meet needs for water for the future. For example, the basic directive of the legislature in SB 1 is:

The state water plan shall provide for the orderly development, management and conservation of water resources and 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 protection of agricultural and natural resources of the entire state. (Texas Water Code, Section 16.051)

One of the "Guiding Principles" as adopted by the Texas Water Development Board (TWDB) for the 2017 State Water Plan is:

(23) Consideration of environmental water needs, including instream flows and bay and estuary inflows, including adjustments by the [Regional Water Planning Groups] to water management strategies to provide for environmental water needs including instream flows and bay and estuary needs[...] (TWDB rule at 31 Texas Admin. Code Section 358.3)

Senate Bill 2 (SB 2) in 2001 and Senate Bill 3 (SB 3) in 2007 recognized that water left in rivers and available to flow to bays and estuaries plays important roles in conserving fish and

wildlife habitat, protecting healthy timber and agricultural lands, providing recreational opportunities and sustaining economic and cultural values. Yet, to date, the work of these bills has not been fully integrated into the SB 1 water planning process.

With the development of environmental flow regimes under Senate Bill 3, it would be easy to adopt the appropriate regimes as the Environmental Water Needs (EWNs) for a region. TCEQ has revised the recommended EWNs to create its environmental flows standards (EFSs) often because the EWNs cannot be met with existing unappropriated water. If EWNs were adopted into the regional plans, the planning groups could begin to identify strategies to fill the gaps for EFSs and EWNs.

TCPS urges TWDB to add to the current rulemaking process or begin a new one to develop the guidance to integrate the environmental flow regimes from the SB 3 process, and possibly the results of SB 2 also, into the state water planning process and to help develop strategies to meet needs where there is not sufficient water in the rivers and streams to do so.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate.

TWC §16.053(h)(7)(C) requires that the Board approve a RWP only after it determines that the plan is consistent with the long-term protection of water, agricultural, and natural resources as embodied in the guidance principles established by the TWDB. In those guidance principles, 31 TAC §358.3(23), RWPGs are to give consideration of environmental water needs including instream flows and bay and estuary inflows, including adjustments to water management strategies to provide for environmental water needs including instream flows and bay and estuary needs. Such consideration must be consistent with environmental flow standards where adopted.

In addition, 31 TAC §357.34(d)(3)(B) requires the analysis of potentially feasible water management strategies regarding environmental factors and requires consideration of the Commission's adopted environmental flow standards under 30 TAC Chapter 298. If environmental flow standards have not been established, then environmental 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 Texas Parks and Wildlife Department to ensure that water management strategies are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows. These existing rules do not prohibit RWPGs from considering flows as the commenters suggest. Additionally, 31 TAC §357.35(b) and (c) require that planning groups recommend water management strategies that are environmentally sensitive and consistent with long term protection of the state's water, agricultural, and natural

resources and 31 TAC §357.30(7) requires that RWPGs describe identified threats to agricultural and natural resources due to water quantity or quality issues.

Additionally, TWC §16.053(h)(7)(C) requires that the Board approve a RWP only after it determines that the plan is consistent with the long-term protection of water, agricultural, and natural resources as embodied in the guidance principles established by the TWDB. Additionally, 31 TAC §357.35(b) and (c) require that planning groups recommend water management strategies that are environmentally sensitive and consistent with the protection of resources.

The Board encourages participation in the regional water planning process and encourages the commenters to direct these comments to the RWPGs. No changes to the rule were made in response to this comment.

Comment

TCPS commented that RWPG reliance on prior plans for projections of needs or strategies is a problem. For example, the projections for water demands for cooling steam electric power generation (SEPG) in Texas remained the same from 2007, to 2012 and now 2017. Yet well before 2012, there were significant changes in the make-up of electric power generation in Texas. There were new technologies for air cooling or limited water cooling for gas fired plants. There were announced closures and reductions in production at a number of old plants. There were announcements that new plants were being abandoned.

Each RWP should be required to justify any proposals for new water needs with a detailed assessment or reassessment of prior justifications for such needs. The regional plans should not be allowed to be wish lists of the economic development activities the region would like.

TWDB rules should assure that each new regional plan is not simply built on the prior plan. Major new manufacturing or power generating facilities and even continuing water use by old facilities or uses that will be ended or reduced, such as irrigated agriculture in some parts of the state, should not automatically be included in new plans. TWDB rules should require that all demands in the 2017 plan be reevaluated based on new and stricter criteria in TWDB rules.

TCPS commented that requiring stronger integration of water and energy planning and permitting at the state level to take advantage of existing water supplies and water saving technologies. *TWDB rules should* start this with a process of better data collection on both the consumed water for cooling and the additional large quantities of water diverted for cooling water supplies for steam electric power generation. It should also include strict rules on projections for water use for such generation and new SEPG facilities, so that each region that wants to have more power plants or expansions of existing ones, has to provide a justification for including the facility as well as the water need in a regional plan.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

At the beginning of each planning cycle, regional water planning groups receive draft demand projections developed by the TWDB and are given revision criteria by which requests to revise projections may be made. Revised demand projections, existing water supplies, and water management strategies are partly based on evaluations and data provided by RWPGs.

Additionally, the TWDB has recently contracted with a technical consultant to conduct an external peer review of the methodologies used to develop electric power generation, manufacturing, and irrigation projections for state water planning. The agency considered the information and is in the process of proposing new methodologies to better estimate future power, irrigation, and manufacturing demands. The TWDB has identified specific improvements to these methodologies that can be implemented by the TWDB, and is currently soliciting stakeholder input. It is anticipated that the updated electric power generation, irrigation, and manufacturing methodologies will be used to develop projections for the 2017-2021 regional water planning cycle on which the 2022 State Water Plan will be based. Based on its available resources, the TWDB will update these projections for each subsequent planning cycle, in addition to population and other WUG water demands, based on Water Use Survey data and other data sources.

The Board encourages participation in the regional water planning process. No changes to the rule were made in response to these comments.

Comment

TCPS commented that Texas law is clear; planning has to be based on the drought of record for the region. Yet some RWPGs are using projected demands beyond such drought needs. The proposed rules do some clarification but need to make it clear that expansions of demands cannot be used, unless the rules provide a standard set of criteria to use so there is consistency across the state. *TWDB rules should* not allow any other planning goal, without a legislative change. If TWDB does propose any different approach it should only be with the requirements that, if regional planning group that believes a greater need should be projected than what is required to meet the drought of record, the group should be required to justify the increase based on a specific set of criteria in TWDB rules and any change should only be approved by the Board. *TWDB rules should require* that regional plans are consistent across the state, not a mix of plans that do not provide for a meaningful state plan.

There are several ways to address concerns with safety factors. TWDB rules could provide the criteria for developing these factors. Then, TWDB could have the benefit of input from all those affected. In the alternative, a regional planning group could propose justifications for additional safety factors that then need to be approved by TWDB in a public process. *TWDB rules should require* projections of all future demands to be shown as likely, not just what a region would like to have.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

Additionally, water demand projections developed and adopted by the TWDB are not developed to exceed conditions anticipated under drought conditions. The Board projects water demands that, together with existing water supply evaluations by the RWPGs, are used to calculate water supply needs on a WUG by WUG basis.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate.

Neither the TWDB rules nor statute prohibit recommended water management strategies that, if implemented, may provide water volumes in excess of projected needs. The “management supply factor” that is now required to be calculated and reported for each WUG, as required under 31 TAC §357.35(g), provides information regarding how much water supply each WUG has been assigned based on strategies that are recommended. Management supply factors are an approach in regional water planning to allow for or acknowledge uncertainties including project permitting or other uncertainties of implementation, population and water demand projections, yield of recommended water management strategies, climate variability, or potential droughts more severe than droughts of record.

This information may support dialogue within a planning group regarding how best to balance recommendations for additional supplies with various risks and uncertainties. No changes to the rule were made in response to this comment.

Comment

TCPS commented that available supplies could be greatly extended or increased by reasonable drought contingency plan implementation. The experience during the droughts of 2010 and 2011 showed that the demands during droughts could be cut significantly, greatly reducing the peak water demands that only occur rarely, but drive the planning process.

TWDB rules should require stricter deadlines on implementation of drought contingency plans and on the revision of such plans to include appropriate aspects of the plans that proved valuable in the last drought. Texas is moving slowly to those measures, but TWDB rules are not creating reasonable incentives to do so. TWDB rules should also go beyond this recommendation on drought contingency plans. There are other ways to reduce the peak uses during drought. The planning process should not simply focus on assuring adequate supplies during drought years. Reducing the peak is critical.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

Regional water planning groups are required to consider a variety of types of water management strategies under TWC §16.053(e)(5) including existing drought planning efforts. The decision whether to recommend a particular water management strategy or water management strategy project lies with the RWPGs.

Neither the TWDB nor the RWPGs have authority to mandate the implementation of drought contingency measures. Drought contingency plans, which are subject to Texas Commission on Environmental Quality (TCEQ) requirements, are implemented at the local level. For the purposes of state water planning, drought management strategies are those activities that reduce water use during times of drought by temporarily restricting certain economic and domestic activities such as car washing and lawn watering. Most planning groups chose not to incorporate drought management as recommended strategies in their plan. No changes to the rule were made in response to this comment.

Comment

TCPS commented that available supplies could be greatly extended or increased by increased use of brackish water and other steps to use existing supplies.

Proper TWDB rules can assure supplies better match demands, without relying on new reservoirs or taking more water out of rivers and streams to the detriment of the environment and local recreational uses that often provide the economic base for many rural communities. *TWDB rules should* make it clear that the regional planning groups must consider and include strategies for use of brackish groundwater, reuse of treated effluent and other steps to extend existing supplies without creating additional risks to the environment, public welfare and rural economies.

Response

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. The rules have previously, and continue to, identify reuse and other various water management strategies as potentially feasible (31 TAC §357.34(c)). Additionally, the previously adopted rule includes revisions to address the requirements of HB 30 of the 84th Texas Legislature that brackish groundwater strategies be considered during plan development. Though statute and rule require consideration of potentially feasible water management strategies, the choice of which strategies to recommend is that of the RWPGs. No changes were made in response to this comment.

Comment

TCPS commented that TWDB rules should require each region to look at the difference in available supply between the Run 8 WAM (current use and return flows) versus Run 3 WAM (full use of paper permits and no return flows except required by permit). Identification of significant differences could lead to better ways to use the water not needed now, until it is needed in the future. It may turn out in many cases that the full water right obtained will not be needed in the future. That was certainly the conclusion from the water rights adjudication process after the drought of the 1950s. Texas found significant amounts of water that could be shifted to fill other projected needs. That analysis would at least add transparency.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate.

Regional water planning surface water supply analysis is under drought of record conditions. Water management strategy evaluations are to be modeled with WAM Run 3 to most closely align with permitting conditions. Regional water planning groups are already able to reflect alternative modeling assumptions for their analysis of existing supplies, including the consideration of return flows, if such a variance is approved by the Executive Administrator. Regional water planning groups are not limited to particular WAM runs for comparative purposes in their plans if they wish to consider potential conditions in their regional water planning area (RWPA). No changes to the rule were made in response to this comment.

Comment

TCPS commented that TWDB rules should also be amended to encourage the regions to propose projects that meet both human and environmental water demands. Examples include: re-use projects that meet municipal demand while dedicating a portion of the re-use to environmental flow needs; voluntary market transactions of water from one use to another, with a portion of the transacted water dedicated to flow needs; construction of off-channel reservoirs that will be operated to meet both human demand and environmental flow needs; and land stewardship projects that help increase aquifer recharge and spring flow.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. Regional water planning groups are required to consider potentially feasible water management strategies including voluntary transfers, reuse, and new supply development (TWC §16.053(e)(5) and 31 TAC §357.34(c)). Additionally, planning guidance principles state that planning groups should consider environmental needs and a strategy may already include adjustments to accommodate environmental flows (31 TAC §358.3(23)). No changes to the rule were made in response to this comment.

Comment

TCPS commented that other ways to use existing supplies more effectively also deserve greater consideration. Reallocation of storage capacity in reservoirs, better local interconnection of supplies and increased use of aquifer storage and recovery have all been considered on an ad hoc basis, but TWDB rules have not required the regional planning groups to consider these options as part of the planning process.

Response

The Board notes that this comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

Additionally, current TWDB rules (31 TAC §357.34(c)) encourage RWPGs to consider reallocation of storage, interconnections, and aquifer storage and recovery water management strategies during the development of their plans. The Board encourages participation in the regional water planning process. No changes to the rule were made in response to this comment.

Comment

TCPS commented that the emphasis on projections over a 50 year period, when even small changes in technology can make major changes to what will occur over such a period is a problem. TWDB rules should shift to focus more heavily on the next two to three decades. TWDB rules should require a multiple scenario approach to planning, especially for the longer-term. For example, instead of making projected demand figures for municipal use for each water user group in a region, with the false appearance of precision projections, the planning process could be used to look at a range of likely demand scenarios, with projections on low to high demands. The scenarios should require at least one “low demand” scenario reflecting stronger assumptions about how per capita use is likely to trend downward and the savings in peak demand that could be achieved by implementation of drought contingency plans.

TCPS therefore urges the Board to require scenarios, focused mainly on shorter term projections of demands. TCPS urges the Board to seek authority from the Legislature to delay the next round of planning to allow the Board to use its funds to provide better projections of demands before the RWPGs have to set their demand and supply projections and recommend strategies to meet the needs.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

A 50-year period is considered a reasonable time-frame for the purpose of developing a state water plan and has been used since the development of the 1968 State Water Plan. Each RWP represents a stand-alone, five-year plan that is based on a set of water demand projections, which are reevaluated for each five-year planning cycle.

The Board recognizes that the long-term degree of accuracy of population projections may decrease with increasing geographic resolution. Nevertheless, WUG-level estimates are necessary to develop a water plan that is implemented by local entities. Aggregating projections at a high level would not facilitate the identification or implementation of specific strategies, including conservation, which must be implemented by specific water providers.

Note that the population projections for the 2017 State Water Plan were actually based on county-level forecasts developed by the State Demographer at the Texas State Data Center using a standard demographic methodology known as a cohort-component model. The sub-county, WUG-level projections referred to were tethered to, and limited by, these county control-total estimates in order to maintain the integrity of the overall state wide projections. Those draft WUG projections were then sent to the planning groups for review and comment by planning group members and the public. Based on comments, shifts in the anticipated location of some population growth were made based on information provided in order to improve their accuracy. Furthermore, the population and water demand projections are revisited and refined, as appropriate, during each five year planning cycle including incorporating each new federal census.

Requiring the suggested “low to high” multi-scenario approach to planning would not, in itself, ensure better water plans and would, by the nature of the process, require incorporating even larger estimates of population, water demands, and water needs. The TWDB considers the use of a single set of projections reviewed and adopted by the planning groups as the most reasonable and effective approach to developing water plans in the context of a cyclical, five-year regional water planning process involving RWPGs with limited resources and time. The TWDB recognizes that future potential water shortages during drought conditions are difficult to predict and are impacted by all of the uncertainties that already affect both water demand and water supply. Ultimately, future water needs (potential shortages) will be impacted by numerous unpredictable forces including shifts in social values, legal changes, climate variability, economic trends, improvements in water use efficiency, energy costs, and advances in technology. Instead of attempting to predict the long-term positive or negative impacts of each of these changes on Texas’ overall water needs, regional and state water planning incorporates the emerging impacts of these complex changes, as a whole, into the regional and state water plans during each five-year planning cycle.

The Board encourages participation in the regional water planning process and encourages the commenter to direct these comments to the regional water planning groups. No changes to the rule were made in response to this comment.

Comment

TCPS commented that there is significant room for improvement in the state's baseline water use and supply data collection. In particular, data on water use in the irrigation, mining and steam electric power generation sectors could be improved significantly through more use of monitoring (versus estimated use) and stronger incentives, if not enforcement, for the existing TWDB and TCEQ rules on use reporting. Collection of more accurate data by groundwater districts is also needed, but will require additional state funding.

TWDB rules should require accurate responses to the agency's surveys. The surveys themselves need to be clearer and more detailed. However, even with clearer surveys, there is no assurance that responders will take the time to provide accurate information or even to be honest unless TWDB make it clear that they need to do so and that there are consequences if they do not.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

TWC §16.012(m) requires that water use surveys be completed and submitted and states that failure to timely complete and return the survey is punishable as a Class C misdemeanor

The TWDB focuses on obtaining quality information through its water use survey by conducting extensive quality control of the results submitted and contacting individual entities who have failed to submit their survey or whose results were suspect in comparison to past reporting results. No changes to the rule were made in response to this comment.

Comment

TCPS commented that better recognition of and planning for the connections between land use, water use and water supply, especially in rapidly suburbanizing counties is vital. TWDB rules should require consideration by regional planning groups of how water supplies can be protected, if not expanded through land conservation and encourage conservation of water on rural lands.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. The TWDB supports all conservation efforts and will continue to make an effort to disseminate relevant conservation information to planning groups for their consideration. Planning rules (31 TAC §357.34(g), as adopted) require that RWPGs consider water conservation practices, including best management practices, for each identified water need. If water conservation strategies are not recommended to meet an identified need, the planning group shall document the reason in the RWP (31 TAC §357.34(g)(2)(B), as adopted). RWPGs are required to meet the planning requirements, and in doing so, the decision to recommend conservation strategies lies with the planning group. No changes to the rule were made in response to this comment.

Comment

TCPS commented that improving municipal water rate design to foster conservation while ensuring adequate revenue is vital. TWDB rules should include clear requirements for cities to encourage conservation. They should require that regional plans identify cities that have rate structures that encourage greater, rather than less water use, and the planning groups to help develop strategies to maximize conservation opportunities in such cities.

Response

The Board notes that this comment is not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The TWDB does not have authority to regulate or adjudge water utility rates. The comment does not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. The TWDB supports all conservation efforts and will continue to make an effort to disseminate relevant conservation information to planning groups for their consideration. Planning rules (31 TAC §357.34(g)(2), as adopted) require that RWPGs consider water conservation practices, including best management practices, for each identified water need. If water conservation strategies are not recommended to meet an identified need, the planning group must document the reason why. RWPGs must meet the planning requirements, and in doing so, the decision to recommend conservation strategies lies with the planning group. TCEQ rules (30 TAC §288.2(a)(1)(H)) prohibit water conservation plans for municipal uses from including promotional rates that may encourage the excessive use of water. No changes to the rule were made in response to this comment.

Comment

BRA commented that the proposed amendments to 31 TAC Chapter 357 should help contribute to a more efficient and workable regional water planning process and resulting water plans. Particular items of note in this regard are the new 100 acre-feet per year water volume threshold for identifying and detailing plans for municipal water user groups, the new major water provider category, and the establishment of a Managed Available Groundwater peak factor to provide flexibility in planning for groundwater availability. They commented that these are areas where TWDB has listened to feedback from the planning groups and others with the intent of improving the process.

Response

The Board acknowledges these comments. No changes to the rule were made as a result of these comments.

Comment

Fifty nine individuals provided comments that were overly general or not relevant to the proposed rules or regional and state water planning.

Response

The Board notes that these comments are not in response to any specific proposed rule change or general concepts addressed by this chapter of TWDB rules. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016. No changes to the rules were made in response to these comments.

MODELED AVAILABLE GROUNDWATER (MAG) PEAK FACTOR
SECTIONS 357.10(20) and 357.32(d)(3)

Comment

At the public hearing, held on August 24, 2016, TAGD and UTGCD commented that both organizations plan to submit written comments on the MAG Peak Factor as well as other parts of the rule proposal. TAGD and UTGCD commented that they commend TWDB on soliciting preliminary input. They noted that TAGD submitted preliminary comments and that many of them were addressed in the rule proposal.

Response

The Board acknowledges these comments and notes that it has responded to written comments received from TAGD and UTGCD elsewhere in this document. No changes were made in response to these comments.

Comment

LSGCD and PGCD commented that the GCD where the MAG Peak Factor will be recognized must have the ultimate authority to approve or reject its inclusion in the RWP. Where a GCD exists, only the GCD should be allowed to approve or reject the MAG Peak Factor, not the district representatives for the applicable Groundwater Management Area ("GMA"). The explanation of the rules in the TWDB's rules preamble states this correctly, but the rules themselves in Section 357.32(d)(3)(A) do not make this clear. This section should be amended to clarify that only in areas where there is not a GCD should the district representatives of the GMA have the authority to authorize the MAG Peak Factor.

Response

The preamble of the proposed rule incorrectly stated that the proposed §357.32(d)(3)(A) stipulates that the request for a MAG Peak Factor must include written concurrence from the groundwater conservation district, or representatives of the groundwater management area, if no groundwater conservation district exists. Due to the nature of DFC development relying upon agreement of all groundwater management area representatives, the language of the proposed rule correctly stated that the request include written approval from the groundwater conservation district, if a groundwater conservation district exists in the particular aquifer-region-county-basin split, and from representatives of the groundwater management area. Both groundwater conservation district and groundwater management area representative approvals are retained in the rule to maintain the integrity of the joint groundwater planning process and

to ensure the achievement of DFCs. No changes to the rule were made in response to these comments.

Comment

HCPUA, FNI, LSGCD, PGCD, TAGD, UTGCD commented that they support the efforts by TWDB to propose amendments to address the need for flexibility in use of the MAG in regional water planning. FNI commented that the MAG Peak Factor provides a simple and reasonable means of addressing the concerns identified in previous planning cycles regarding the drought of record basis of the RWPs versus long term average basis of MAG values.

Response

The Board acknowledges these comments. No changes to the rule were made as a result of these comments.

Comment

HCPUA commented that the proposed MAG Peak Factor rules include a process designed to protect the integrity of regionally-set DFCs including that a regional planning group that proposes a MAG peak factor must provide a "technical basis" and demonstrate the temporary increase would not prevent the achievement of DFCs, and must have "written concurrence from the GCD". The strictness of this process may impede the use of MAG peak factors by regional planning groups.

SAWS commented that it believes a requirement for written concurrence or other affirmative action by a relevant groundwater conservation district (GCD) in order for the planning group to go forward may unintentionally preclude the completion of the planning process; that GCDs are already strongly represented on planning groups and might voice concern about strategies in that setting; and that within the state's existing water management system, GCDs, as the regulatory body, will assess the impact of a particular strategy through the permitting process as the project evolves.

The LCRA commented that to the extent that the inclusion of a peak factor allows for inclusion of more groundwater strategies that may need to acquire permits from the groundwater districts, it may be inappropriate to require approval from the regulatory authorities (groundwater districts) for inclusion of the peak factors, given that the same entities will need to ultimately make decisions on such permit applications. If the requirement for GCD approval is retained, the guideline should clarify that the only required approval is from the GCD where a water management strategy is located.

Response

Approval from the groundwater conservation district (where applicable) is retained, since the groundwater conservation district is statutorily required to develop management goals that achieve the DFC. Both groundwater conservation district and groundwater management area representative approvals are retained in the rule to maintain the integrity of the joint groundwater planning process and to ensure the achievement of DFCs throughout the groundwater management area. Approved MAG Peak Factor values will represent the

quantified annual groundwater available for planning purposes, and therefore will apply to the particular aquifer-region-county-basin split that is included in the request. Approval from groundwater conservation districts and groundwater management area representatives are both required where those entities have jurisdiction. No changes have been made in response to these comments.

Comment

The City of Austin commented that it is critical to maintain groundwater conservation district (GCD) approval of proposed MAG peak factors to be used in regional planning; that the GCDs should be most familiar with the set of conditions used to determine the MAG, the permitted and actual pumping; and that GCDs should have the best local knowledge of aquifer function. The City of Austin also commented that it understands and supports the intention of TWDB's proposed rules (with respect to the MAG peak factor) that they will not be used to modify GCD authority to regulate groundwater as authorized under Texas Water Code Chapter 36.

Response

The Board concurs with this comment. The planning rules in Chapter 357 do not modify groundwater conservation district authority to regulate groundwater as authorized by Texas Water Code, Chapter 36. No changes to the rule were made as a result of this comment.

Comment

LCRA commented that the temporary MAG Peak Factor helps to add some needed flexibility within the regional planning process, and that the rule recognizes the fact that the modeled available groundwater (MAG) is NOT a regulatory cap on groundwater permitting for groundwater conservation districts.

Response

The Board acknowledges this comment. No changes to the rule were made as a result of this comment.

Comment

LCRA commented that the rule should be further clarified to allow regional planning groups to address circumstances where the MAG does not reflect the actual maximum pumping allowed by permits already issued by some GCDs by allowing the MAG Peak Factor to include all issued permits, with the recognition that it is unlikely in these cases that the maximum permitted amounts would be pumped on anything but a temporary, "PEAK" basis. Particularly in instances where the MAG does not appear to accommodate any additional groundwater for new strategies, LCRA encourages the TWDB to consider whether there is any further flexibility to expand consideration within the PEAK factor or some other similar factor that would allow additional groundwater to be included as available.

Response

The MAG Peak Factor will allow flexibility to develop RWPs that more accurately reflect groundwater availability under current statute while continuing to meet the statutory mandate that plans be consistent with the DFC. It is the decision of each RWPG, in concurrence with the relevant groundwater conservation district and groundwater management area, to determine what, if any, MAG Peak Factor is requested for their planning efforts. No changes were made as a result of this comment.

Comment

SAWS commented that it believes that the current requirements strictly limiting groundwater availability to MAG amounts in the regional planning process limit or exclude potentially viable water supply projects at a very early stage. SAWS commented that to that end, it very much appreciates TWDB staff efforts to find a creative solution to the need for more flexibility in addressing groundwater availability, and also appreciates staff requests for input on this issue from stakeholders in the regional planning process.

Response

The Board acknowledges this comment. No changes to the rule were made as a result of this comment.

Comment

SAWS commented that additional time for discussion and input is warranted prior to the adoption of a new MAG Peak Factor planning rule. SAWS has concerns about how a MAG peak factor could be developed and what might be the consequences of its implementation. One example would be, by what methodology would a planning group determine in what decade to apply the MAG peak factor? It would be beneficial for planning groups and other stakeholders to have further opportunity to work through scenarios utilizing a MAG peak factor in order to analyze potential impacts and determine whether such an option is workable.

HCA and SMRF commented that in order to better understand the potential magnitude of proposed MAG peak factor rules, a fully developed methodology for determining specific MAG peak factors should be published for further review and comment.

Response

The MAG Peak Factor is to allow flexibility to RWPGs to develop RWPs that more accurately reflect groundwater availability while continuing to meet the statutory mandate that plans be consistent with the DFC. The relevant groundwater conservation district and groundwater management area may require and/or provide supporting data as part of the “technical basis,” as they deem appropriate, for their concurrence with the MAG Peak Factor and planning guidance will document these supporting data to include. It is the decision of each RWPG, in concurrence with the relevant groundwater conservation district and groundwater management area, to determine what, if any, MAG Peak Factor is appropriate and what is the justifiable

technical basis of such a Peak Factor. The request for a MAG Peak Factor must be approved by the Executive Administrator. No changes were made as a result of these comments.

Comment

HCA and SMRF commented that currently, finite groundwater resources are managed and permitted to the limits of local hydro-geologic volumes, and that management schema informs regional water planning for future needs. With that understanding, regional water planning should continue to honor the established caps that currently limit allocations of groundwater as designated in Modeled Available Groundwater (MAG) volumes as determined by the Desired Future Condition (DFC) planning process. Though Chapter 357 rules changes have no explicit effect on the Chapter 36 rules that authorize Groundwater Conservation Districts (GCDs) to set DFCs, and issue and enforce permits, the proposed MAG peak factor rule change would be a departure from existing rules that recognize the MAG as a groundwater production cap in the regional water planning process.

Response

TWC Chapter 36, which regulates groundwater conservation districts, does not set the MAG as a cap. The MAG Peak Factor is, intentionally, aimed at ensuring that MAGs are not treated as artificial planning caps that do not actually reflect statute or groundwater conservation district permitting and management of groundwater. The flexibility provided by the MAG Peak Factor must support achievement of the DFC and would have to be approved by those responsible for the permitting and management of the source as part of the request process. No changes were made in response to these comments.

Comment

HCA and SMRF commented that in order to better understand the problem that these proposed rules are attempting to remedy, a specific definition of “realistic groundwater pumping” should be provided in the next proposed rules draft.

Response

This language from the proposal preamble was intended to acknowledge existing groundwater conservation district authority and how they already manage groundwater to achieve DFCs, including the fact that actual pumping varies over time. No changes to the rules were made in response to these comments.

Comment

HCA and SMRF commented that in order to bring clarity to how these proposed MAG peak factor rules will be applied to the regional water planning process and how they will relate to the GCD permitting process, a more detailed second phase of proposed rules should be published for further review and comment.

Response

A MAG Peak Factor as authorized under Chapter 357 is for planning purposes only. A MAG is the amount of groundwater that the Executive Administrator determines may be produced on an average annual basis to achieve a DFC. A MAG Peak Factor is not a replacement for or precursor to normal groundwater conservation district permitting processes. The Board does not have authority to regulate groundwater production or monitoring. In response to this and other comments, the adopted definition of MAG Peak Factor in §357.10(20) has been changed to add language that the approval of a MAG Peak Factor is not intended as a limit to permits or as an indication of pre-approval for any future permit application. The Board does not consider it necessary to repeat such clarification throughout Chapter 357.

Comment

HCA and SMRF commented that in order to protect sustainable water well levels, proposed MAG peak factor rules should include specific language to protect the ability of a GCD to continue to enact specific Drought Management Plans as required by Chapter 36.

Response

Nothing in the rule revision changes any of the authority of or responsibilities of groundwater conservation districts, including regarding groundwater drawdown or regarding achievement of the DFC. The MAG Peak Factor rule does not impair groundwater conservation districts' authority to regulate as they see appropriate, including enacting Drought Management Plans. No changes were made in response to these comments.

Comment

HCA and SMRF commented that in order to protect surface water flows, proposed MAG peak factor rules should include specific language to protect spring flow and base flow such that minimum environmental flows as promulgated through the SB3 legislation be maintained.

Response

Desired future conditions established after September 2011 are required to consider other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water, pursuant to TWC §36.108. Groundwater conservation districts or groundwater management area representatives approving the request of a MAG Peak Factor are to ensure that the DFC would be achieved. If a DFC addresses spring or base flows, the groundwater conservation districts and groundwater management area representatives would have to consider this when evaluating the MAG Peak Factor request.

Environmental flow standards adopted through the SB3 process only apply to new appropriations of surface water issued after September 1, 2007, and do not generally require that minimum flows are maintained. No changes were made in response to these comments.

Comment

HCA and SMRF commented that in order to establish balance in the MAG peak flow concept, the proposed definition of MAG peak factor should be expanded to allow for sub 100-percent recommendations by RWPGs.

Response

Regional water planning groups currently have the ability to develop RWPs that, through current supplies and future water management strategy supplies, account for use of groundwater availability less than the MAG. It is not necessary to seek groundwater conservation district or groundwater management area approval to develop a RWP as such. No changes were made in response to these comments.

Comment

HCA and SMRF commented that in the interest of headwater and base flow protection of Hill Country originating rivers and streams, the major karst aquifers of GMAs 7, 9, and 10 should be excluded from mandatory participation in these proposed MAG peak factor rules.

Response

The use of a MAG Peak Factor is not a mandatory requirement. The default MAG is 100 percent, or 1.0 factor of the MAG for all aquifers in all locations. The TWDB recognizes that for some locations a MAG Peak Factor will not be supportable on any technical basis, but declines to attempt to prescribe exactly where it may be used. It is within the purview of groundwater conservation districts, groundwater management area representatives, RWPGs, and the Executive Administrator to deny a MAG Peak Factor request. No changes were made in response to these comments.

Comment

SMRF commented that drought times would be the worst time to consider allowing extra pumping from groundwater in its region. A lifting of the cap on pumping at such a time would certainly dry up many springs, and thus reduce river flows. This could also have the unintended impact of drying up springs where endangered species are found.

Response

Nothing in the rule revision changes the existing responsibilities, authority of, or ongoing management practices of groundwater conservation districts. Planning groups must provide documentation on how the MAG Peak Factor would not prevent the associated groundwater conservation district from managing their groundwater resources to achieve the desired future conditions. Desired future conditions established after September 2011 are required to consider other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water, pursuant to TWC §36.108. Groundwater conservation districts or groundwater management area representatives approving the request of a MAG Peak Factor are to ensure that the DFC would be achieved. If a DFC addresses spring or base flows, the groundwater conservation districts and groundwater management area representatives would

have to consider this when evaluating the MAG Peak Factor request. No changes were made in response to this comment.

Comment

HGMC commented that the application of a Peak Factor to a MAG for a DFC that is not originally based on Drought of Record conditions should not be allowed, as the MAG Peak Factor term would not be consistent with the requirement for regional planning to be based on DOR conditions, as with the surface-water supply term. Otherwise, a MAG that essentially already incorporates shorter-term considerations would potentially have such considerations doubly accounted using a Peak Factor. This suggested restrictive change would promote better firm-yield planning as intended by regional planning, whether a Peak Factor is applied or not.

Response

There is no statutory requirement that DFCs be developed based on drought conditions although state water plans are statutorily required to be based on drought conditions and consistent with DFCs. That a DFC and associated MAG are not based on drought of record conditions does not preclude the possible application of a MAG Peak Factor, for example, in a location that has highly variable pumping from year to year. Groundwater conservation districts, groundwater management area representatives, RWPGs, and the Executive Administrator can consider this when evaluating a MAG Peak Factor request. No changes were made in response to this comment.

Comment

HGMC commented that the proposed rules amendments do not specifically address the establishment and use of a Peak Factor in a “white area”, i.e., an area of a GMA without GCD protections. Since one or more GCDs have to approve a Peak Factor as being consistent with the applicable DFC, if there is no GCD, it seems reasonable that a Peak Factor cannot be established in a white area. It is recommended that such a situation be specifically addressed in the amended Rules here. Moreover, for aquifers that a GMA has declared as Non-Relevant for Planning Purposes, the RWPG actually sets its groundwater availability, with advice and counsel from one or more GCDs or the GMA at the RWPG’s discretion. But since it is Non-Relevant, no DFC or MAG will exist. Therefore, a Peak Factor *per se* for a Non-Relevant Aquifer is not appropriate and should not be able to be established by the RWPG. (Obviously, the RWPG can establish a rational water availability amount that incorporates shorter-term considerations without using the Peak Factor.) Again, the rule amendments should explicitly address this situation.

Response

The rules specify that approval from a groundwater conservation district is required, if a groundwater conservation district exists in the particular aquifer-region-bounty-basin split where the MAG Peak Factor is proposed. If no groundwater conservation district exists, approval must be obtained from the representatives of the applicable groundwater management area. Rules also specify that the MAG Peak Factor is applied to MAG values. As noted, the

MAG Peak Factor is not applicable to non-MAG groundwater availabilities. No changes were made in response to this comment.

Comment

HGMC commented that by intent, the use of a Peak Factor with the MAG will produce a larger water supply term in the Needs Analysis equation, which for a given water Demand, will produce a smaller Need to be accommodated by the Water Management Strategies. This would tend to artificially reduce the projected need for water conservation projects, alternative water supply projects such as desalination and ASR, and water reuse projects in the Regional Plan, and therefore preclude or reduce their eligibility for SWIFT funding, while increasing the level of competition between them and other water projects. To accommodate this situation, consider adding language that SWIFT funding eligibility of WMSs will continue to be based on the longer-term Needs derived from the firm-yield MAG without the Peak Factor.

Response

The MAG Peak Factor should result in more accurate estimates of water needs. Note that the volume of identified water needs does not in any way limit or restrict the types of strategies that can be recommended. If a project sponsor or RWPG determines it is appropriate to recommend conservation, the use of a MAG Peak Factor does not prohibit such a recommendation. No changes were made in response to this comment.

Comment

TAGD commented that there remains some general uncertainty and concern regarding the way a percentage based MAG Peak Factor will affect how WMSs are incorporated into RWPs. TAGD believes further clarification on the process is necessary, particularly addressing any mechanisms that might need to be in place to ensure proposed WMSs above the MAG are fulfilling a need.

Response

A MAG Peak Factor that is approved would simply modify the volume of groundwater availability that is reflected in the RWP for the particular aquifer-county location. In all other respects, the plan development process and content are not changed by this rule revision. Note that the volume of identified water needs does not in any way limit or restrict the types of strategies that can be recommended. No changes were made in response to this comment.

Comment

TAGD, LSGCD, PGCD, and UTGCD commented that the rule should specify that the MAG Peak factor is a quantified groundwater availability for pumping, not permitting, under specific circumstances to be utilized for planning purposes only.

TAGD, LSGCD, and UTGCD commented that the rule should specify that the application of a MAG Peak Factor to allow for temporary increases in annual availability for planning purposes is not a replacement for or precursor to normal GCD permitting processes.

LSGCD commented that this notion of exclusivity appears clear in the preamble of the proposed rule amendments, the rules themselves are inadequate in making this point.

HGMC commented that it should be more forthrightly stated that the MAG *sensu strictu*, regardless of the existence of an applicable Peak Factor, is the appropriate expression of groundwater production that conforms to its long-term Desired Future Condition and continues to be the intended basis for permitting such production under TWC Chapter 36.

Response

A MAG Peak Factor as authorized under Chapter 357 is for planning purposes only. A MAG is the amount of water that the Executive Administrator determines may be produced on an average annual basis to achieve a DFC. A MAG Peak Factor is not a replacement for or precursor to normal groundwater conservation district permitting processes. In response to this and other comments, the adopted definition of MAG Peak Factor in §357.10(20) has been changed to add language that the approval of a MAG Peak Factor is not intended as a limit to permits or as an indication of pre-approval for any future permit application. The Board does not consider it necessary to repeat such clarification throughout Chapter 357.

Comment

LSGCD and PGCD commented that it should be clarified in the rules that while the MAG Peak Factor may be used to provide flexibility for planning to accommodate anticipated temporary fluctuations in pumping between wet and dry periods or account for other shifts in the timing of pumping, in order to stay consistent with the DFCs, the actual MAG, not the MAG Peak Factor, must still be achieved cumulatively over the 50-year planning horizon. In other words, if temporary increases in pumping above the MAG in some years will be recognized, then temporary decreases in pumping below the MAG in other years must be recognized, so that over the 50-year planning horizon total cumulative pumping does not exceed the MAG.

Response

In general, this is true in concept. A MAG is the amount of water that the Executive Administrator determines may be produced on an average annual basis to achieve a DFC. Note that the regional plans only present drought conditions and therefore will not reflect wet year pumping. It is a required part of the technical information to be submitted in support of the request to illustrate how use of a MAG Peak Factor will not prevent the GCD from achieving the DFC. No changes were made in response to these comments.

Comment

LSGCD commented that it recommends bolstering the process by which a RWPG petitions the TWDB for a MAG Peak Factor. It is critical that GCDs have the necessary information to consider the need for a MAG Peak Factor and make an informed decision on whether to approve or reject the proposed MAG Peak Factor percentage. Section 357.32(d)(3) of the proposed rules should be amended to require that the written request from an RWPG to the TWDB to apply a MAG Peak Factor include sufficient detailed information for the GCD to understand the exact nature of the request in order for the GCD to evaluate it, including an

explanation of how the MAG Peak Factor will not impact achievement of the DFCs over the planning horizon.

Response

Because the MAG Peak Factor is intended to better reflect the actual management of groundwater by groundwater conservation districts who are involved in planning, often as representatives on RWPGs, the request of a MAG Peak Factor could be initiated by a groundwater conservation district or a RWPG. The Executive Administrator review may, depending on the area to be affected by the MAG Peak Factor, involve evaluation of the relevant hydrostratigraphic and geologic features, groundwater levels and groundwater flow, groundwater pumping, spring flow, interaquifer flow, and discharge to surface waters. As needed, districts or RWPGs should provide adjusted model well files or detailed georeferenced maps of pumping assumptions (pumping location, pumping amounts, and model layer) to support the TWDB's evaluation. The effect of the MAG Peak Factor on the adjacent or hydrologically connected groundwater resources outside of the district will be evaluated to understand the possible impact of the MAG Peak Factor on the ability of neighboring districts to achieve their relevant DFCs. This evaluation may include reviewing existing groundwater availability modeling runs and/or performing additional modeling runs, as required. Planning guidance will document these supporting data to include in requests and §357.32(d)(3)(B) has been changed to reflect that the RWPG's request submittal to the groundwater conservation district, groundwater management area, and Executive Administrator includes documentation in sufficient detail for evaluation.

Comment

UTGCD and PGCD commented that §357.32(d)(3)(A) should specify that the GCD's approval should specify whether the MAG Peak Factor applies broadly within the relevant aquifer-region-county-basin split or whether it applies to a particular water management strategy or Water User Group, or a specific location, specific geographic area, or specific part of the relevant aquifer.

HGMC commented that the language in the proposed Rule amendment should also make it clear that the Peak Factor should be applied to satisfying demands of a designated set of Water User Group(s), and not necessarily applicable to any/all WUGs.

Response

In order to be incorporated into the water plans, a MAG Peak Factor request will have to specify which aquifer-county locations it would be applied to. A MAG Peak Factor that is approved would simply modify the volume of groundwater availability that is reflected in the RWP for the particular aquifer-county location. In all other respects, the plan development process and content are not changed by this rule revision. It is the task of the RWPG to determine how water availability is allocated in the plan. No changes were made in response to these comments.

Comment

NWF, LSCSC, and GBF commented that consistent with statutory requirements, the rules regarding a MAG Peak Factor must ensure that the potential impacts on springflow and on surface water flow of any increased pumping during droughts are acknowledged and evaluated before the incorporation of such a Peak Factor is authorized.

Response

Groundwater conservation districts or groundwater management area representatives approving the request of a MAG Peak Factor are to ensure that the DFC would be achieved. If a DFC addresses spring or base flows, the groundwater conservation districts or groundwater management area representatives would have to consider this when evaluating the MAG Peak Factor request. No changes were made in response to these comments.

SUBCHAPTER A. GENERAL DEFINITIONS

SECTION 357.10. DEFINITIONS AND ACRONYMS

Comment

The City of Austin commented that in the definition of County-Other, clarification of the phrase "rural areas not served by a water utility" is needed to make sure that the water utility's full service area is referenced. Consider replacing the phrase "rural areas not served by a water utility" with: "rural areas not within a water utility's service area, including its impact fee service area or area contained within a water utility's certificate of convenience and necessity (CCN)."

Response

The Board agrees that clarification of rural areas is warranted. In response to this comment, the Board has revised the adopted definition in 31 TAC §357.10(7) to be "An aggregation of water utilities and individual water users within a county and not included in subparagraphs 31 TAC §357.10(41)(A)-(D)."

Comment

CTWC commented that the proposed definition of "County-Other" in §357.10(7) refers to "an aggregation of utilities that provide less than an average of 100 acre-feet per year, as well as rural areas not served by a water utility in a given county." Does the "County-Other" Water User Group (WUG) serve as a catch-all category for miscellaneous water users? Or does it only include domestic or municipal water users? At first glance, the definition seems to suggest that this WUG includes only small water supply entities (or individuals) providing water for municipal and domestic use; and proposed §357.10(41)(E) apparently validates that interpretation. Is the "County-Other" category intended to include other types of water uses and users? Do the Regional Water Plans include Water Demand numbers for domestic and livestock uses (which are exempt from surface and groundwater permitting requirements) as part of the total Water Demand in the Region?

Response

County-Other captures municipal and domestic water users who are served by utilities that provide less than an average of 100 acre-feet per year and rural municipal and domestic water users not served by a water utility. Non-municipal uses, including livestock use, are not included in County-Other. In an RWP, livestock water use is captured by county as livestock use. Those domestic and livestock users that are supplied by exempt diversions or wells are accounted for under County-Other and livestock, respectively. In response to this and other comments, the Board has revised the adopted definition in 31 TAC §357.10(7) to be “An aggregation of water utilities and individual water users within a county and not included in subparagraphs 31 TAC §357.10(41)(A)-(D).”

Comment

The City of Austin commented that in developing the regional plans, it is helpful to be able to categorize certain strategies as drought management water management strategies, but the definition should encompass a wider range of strategies that are not just temporary. Consider either: 1) expanding this definition to include temporary, long term and permanent demand management strategies and augmented supply strategies; or 2) having two separate definitions: one for demand management drought strategies and a second for augmented supply drought strategies that are either temporary, long-term, or permanent.

Response

For state water planning purposes, drought management water management strategies are composed of drought management measures characterized by temporary demand management measures during drought conditions. The TWDB acknowledges that utilities may have components of their drought management plans that are characterized as supply acquisition. Such projects, should they be recommended water management strategies in the planning process, would be categorized as additional water supply. No changes have been made in response to this comment.

Comment

LCRA and TWCA commented that in proposed §357.10(10), the definition of Drought Management Water Management Strategy references measures that provide temporary reductions in demand. However, some drought response strategies involve temporary acquisition of additional water supplies (e.g. through emergency water rights permits or interconnects). Therefore, the definition should be expanded to include strategies that secure additional water supply to respond to drought.

Response

For state water planning purposes, drought management water management strategies are composed of drought management measures characterized by temporary demand management measures during drought conditions. The TWDB acknowledges that utilities may have components of their drought management plans that are characterized as supply acquisition. Such projects, should they be recommended water management strategies in the planning

process, would be categorized as additional water supply. No changes have been made in response to these comments.

Comment

CTWC commented that it is unclear that the proposed definition of “Drought of Record” in §357.10(11) provides sufficient objective criteria for each RWPG to make this determination in a uniform and consistent manner. If the determinations are made within each Region using varying criteria, then the 16 Regional Water Plans that become the State Water Plan may lack the overall consistency that is so vital to the State Water Plan itself. The TWDB should provide the RWPGs with the “Drought of Record” time period and conditions for the watersheds within each Region.

Response

While the statewide drought of the 1950s is considered the benchmark drought for state water planning, regional droughts of record may vary by river basin. The drought of record for planning purposes is determined using water availability models developed by the TCEQ and is based on historical flow data. Because RWPGs are required by §357.32(c) to use the most recent TCEQ water availability models, any new droughts of record identified by model updates will be accounted for when evaluating existing supplies or water management strategies. No change has been made in response to this comment.

Comment

TWCA commented that in proposed §357.10, TWDB should clarify the definition of Existing Water Supply related to the amount that is physically accessible compared to the amount legally accessible. For example if a WUG has its water intake sized for a smaller amount than the amount of supply it has under contract, is the existing supply equal to the actual intake capacity and the expansion of that infrastructure would be considered a strategy?

Response

Existing Water Supply must be both physically accessible and legally accessible to a WUG. In the example given, the Existing Water Supply is limited to the actual intake capacity, and the expansion of that infrastructure would be considered a strategy. No change has been made as a result of this comment.

Comment

The City of Austin and CTWC commented that they support the revisions to the definition of "Firm Yield" with the important added reference that "all applicable permit conditions (are) met." This definition revision is consistent with TCEQ's definition of "Firm Yield" in 30 TAC Chapter 297. In addition, CTWC encourages the TWDB to institute procedures to assure that Firm Yield calculations are routinely updated as new hydrology data become available.

Response

The Board acknowledges this comment. Section 357.32 of the Board's rules requires RWPGs to evaluate existing surface water supplies, including firm yield of reservoirs, using TCEQ's most current water availability models. As TCEQ's models are updated, RWPGs are required by rule to use those models to determine existing supplies. The rule has not been changed as a result of these comments.

Comment

LCRA and TWCA commented that Firm Yield is defined only for water available from a reservoir. However, there are instances where a run-of-river water (i.e., a diversion water right with no associated right to store water) has a firm yield associated with it alone or when used in conjunction with a system of other water rights. Further, there are also entities that rely on the firm yield produced from run-of-river water rights. Therefore, the definition should be broadened to include the water volume that can be provided from run-of-river water rights when used alone or in conjunction with other water rights.

Response

The Board has revised the definition of Firm Yield in the proposal document to make it more consistent with the TCEQ's definition of Firm Yield in 30 TAC §297.1(20). The Board acknowledges that there are entities that rely on run-of-river water rights alone or in conjunction with other supplies and understands the importance of evaluating the reliability or "firmness" of those supplies. To address the evaluation of run-of-river supplies, TWDB rules §357.32(c)(2) specifies the method for evaluating water volumes that can be provided from run-of-river diversions that are the sole source for municipal WUGs for reliability under drought of record conditions. The adopted rule does not prevent accounting for run-of-river firm diversions or firm supplies that rely on multiple surface or conjunctive supplies in the planning process. No changes have been made in response to these comments.

Comment

FNI commented that it supports placing responsibility for identification of Major Water Providers (MWP) on the Regional Water Planning Group (RWPG), as indicated in the proposed language of 31 TAC §357.10(19). This approach provides important flexibility to the RWPGs in determining which entities occupy a key role in supply. Because of distinct properties of the various regions, the criticality of water suppliers cannot be easily captured within a single category such as Wholesale Water Suppliers (WWPs), nor can it be captured appropriately across all regions using set volumetric criteria.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

HCPUA commented that the addition of Major Water Provider as a defined term is intended to give RWPGs "more flexibility in deciding on which large water provider they want to report information in their RWPs and facilitates the use of a single, stable list of entities". The HCPUA thinks the need for this new defined term has not been adequately explained or substantiated, and is concerned that it will cause more confusion than it will help in our planning region, Region L.

Response

The term Major Water Provider is being defined in 31 TAC §357.10(19) as a WUG or WWP of particular significance to the region's water supply as determined by the RWPG. The term is also added to regional water planning reporting requirements in 31 TAC §§357.30(4), 357.31(b,f), 357.32(g), 357.33(b,d,e), and 357.35(g) in response to concerns from several regions. As stated in the preamble, issues presented by planning groups over past planning cycles included: 1) Smaller regions only had one WWP in the entire region due to the volumetric threshold of the previous WWP definition, yet they felt that there were other significant water providers in the region that didn't meet the reporting threshold of a WWP; 2) Some larger regions had several entities on the WWP 1,000 acre-feet per year threshold that would fall on and off the list during or between planning cycles due to reported historic use and there was a lack of consistency in reporting between plans; and 3) Some regions had some WWPs that met the 1,000 acre-feet per year threshold so they were required to report on the entity, yet the RWPG did not consider the entity was a particularly significant water provider in the region.

Wholesale water provider remains defined and WWPs will continue to be necessary entities for the data analysis during plan development. Some RWPGs have already discussed reporting on the same WWPs as they have in the past by designating those entities as their Region's Major Water Providers. Others may take a different approach; it is up to the RWPG. No change has been made in response to this comment.

Comment

FNI commented that it supports the addition of a definition for Planning Decades in 31 TAC §357.10 (21). This definition establishes a consistent and logical time basis for planning data. Application of this definition should prevent inappropriately representing Water Management Strategies (WMS) or WMS Projects in the plan earlier than the anticipated implementation date. Additionally, this definition would prevent interregional conflicts caused by regions applying different time standards to a single supply.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

The City of Austin commented that in the definition of Water Conservation Measures, the exclusion language in the last sentence looks too broad: "For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies." On-site alternative source water storage such as rainwater harvesting storage, air conditioner condensate storage and graywater storage, among others, might be inadvertently excluded under the published definition. Clarification is needed such that these and similar examples would not be excluded from this definition.

Response

For state water planning purposes, conservation water management strategies are composed of drought management measures characterized by demand management; not additional water supplies. The projects submitted by the commenter (including reuse), should they be recommended water management strategies in the planning process, would be categorized as additional water supply development. No changes have been made in response to this comment.

Comment

CTWC commented that as currently written, the definition of Water Demand raises several areas of concern:

1. Ambiguity in Water Volume Determinations. The reference to a "volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group" appears to require the calculation of a new water volume for use in this definition, since it introduces new and subjective terminology regarding water requirements for a WUG's "anticipated domestic, public, and/or economic activities." If the new definition is intended to capture a broader universe of water users and water demands (other than the demands of the WUGs identified in §357.10(41)), such as consumptive and non-consumptive demands that support significant economic activities and environmental flows, it supports that goal and suggests that the definition be revised to read as follows: "Volume of water required to satisfy the anticipated demands of the Water User Groups identified in §357.10(41) of this section, along with additional water volumes required to carry out the anticipated domestic, public, and/or economic activities of other water users and water uses within a Regional Water Planning Area, including demands that support significant economic activities and environmental flows."

If the new definition is intended to merely refer to the Water Demand numbers assigned to each WUG in accordance with the TWDB's technical guidance for Regional Water Plans, please assure that this definition focuses solely upon objective criteria, based upon the criteria applied in the technical development of a Regional Water Plan, so that the Water Demand numbers used by each Region and compiled into each State Water Plan are reasonable, consistent, and reproducible.

2. Ambiguity in Reference to Drought Conditions. The proposed new definition refers to a water volume required "during drought conditions." Is this intended to refer to "drought of record" conditions? If so, please add that clarification. If not, please consider additional regulatory guidance on the "drought conditions" to be utilized in this calculation, or explain that

the TWDB will calculate and provide the Water Demand numbers for the RWPGs to use in their Regional Plans, if that is the case.

Response

The definition explains a term that is frequently used in relation to the six WUG categories. There are six water use categories specified in 31 TAC §357.31 for which TWDB develops water demand projections including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock, which are all considered consumptive uses. Planning groups may choose to include in the RWPs discussion of issues such as non-consumptive uses and, when evaluating water management strategies, planning groups may consider factors deemed relevant by the planning group including recreational impacts pursuant to 31 TAC §357.34(d)(10). No changes have been made in response to these comments.

Although the term drought of record strictly applies only to water availability (31 TAC §357.32(a)(1)), all aspects of the plans are aimed at reflecting conditions that would be expected to occur in the event of a repeat of a drought of record. No changes have been made in response to these comments.

Comment

NWF, LSCSC, and GBF commented that the proposed new definition of water demand should be revised to explicitly incorporate quantified reductions consistent with implementation of required drought contingency plans. RWPGs will continue to have the latitude to recommend additional drought contingency measures as an additional means of meeting projected water needs, but, in determining drought condition demands, reductions in demand consistent with implementation of existing mandatory drought contingency measures should be incorporated.

Response

Drought contingency plans are implemented at the local level and often focus on potential issues related to the retail distribution system capacity rather than the total supply volume to which the entity has access. These plans may consist of one or more strategies for temporary supply and/or demand management and response to temporary water supply shortages and other water supply emergencies. It is not appropriate to incorporate assumed water savings from drought contingency measures into baseline municipal demand projections because the implementation of drought contingency plans requires additional action on the part of cities or water utilities and is reflected on the “supply” side as a water management strategy that must be implemented. No changes have been made in response to these comments.

Comment

HPWD commented that for agricultural irrigators, the term "Water Demand" intuitively means the amount of water the crop requires for a certain level of productivity. Unfortunately, groundwater supplies across much of the region do not provide that much water. Deficit irrigation is a common practice in this region, where groundwater is primarily a supplement to precipitation. The proposed definition does not explicitly include agricultural irrigation, and HPWD proposes that the definition be amended to include the following: "Agricultural irrigation water demand is the long term expected usage based on calculated estimates." Using

this definition, the agricultural irrigation water demand projections will, in fact, be long term expected usage. Using this definition will help develop a realistic projection of future expected usage.

Response

While the Board recognizes that full crop water demands aren't necessarily going to be met by irrigation, for the purposes of regional water planning, demands account for the amount of water pumped for irrigation of crops, not the water needed or used by the crop or associated with dry-land farming. The rule reflects current planning practice and is not intended to change the approach to estimating demands. The Board believes that the rule text is broad enough to represent all six WUG categories. No changes have been made in response to this comment.

Comment

FNI commented that the concept of WMS Projects emerged during the development of the 2016 RWPs due to the need for the planning process to accommodate the State Water Implementation Fund for Texas (SWIFT). At that time, the distinction between WMS and WMS Project was not formally defined. The proposed revisions in 31 TAC §357.10(38) and 31 TAC §357.10(39) provide much-needed clarification on this issue.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

FNI commented that it supports the creation of a single volumetric standard for qualifying discrete municipal Water User Groups (WUGs) proposed in 30 TAC §357.10 (41). This is simpler and more consistent than the complex criteria incorporating both population and water volume considered in prior RWPs.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

FNI commented that the proposed language of 30 TAC §357.10 (41)(B) describing the criteria for inclusion of privately-owned utilities as individual WUGs includes a requirement that the utility must provide more than 100 acre-feet per year for municipal use for each owned water system. This requirement potentially creates consistency issues depending on the characteristics of the privately-owned utilities. For example, a privately-owned utility with a single water system providing exactly 100 acre-feet per year would meet the volume criterion and potentially be listed as an individual WUG, while a much larger utility with many systems each serving more than 100 acre-feet per year would be excluded in spite of its size if it owned a single system providing 99 acre-feet per year. If the intent of the proposed revision is to plan

for each privately-owned utility as a whole, the requirement for inclusion should consider any privately-owned utility that has one or more systems supplying 100 acre-feet per year. However, it would be preferable to consider inclusion of privately-owned utilities by system rather than for the utility as a whole, since planning has to be done by system and systems for a single private utility may be widely separated.

Response

To address the comment yet retain the integrity and consistency of utility-based planning (rather than system-based planning), the definition pertaining to privately-owned utilities has been revised to include privately-owned utilities whose combined systems *average* greater than 100 acre-feet per year for municipal use. This approach is intended to capture and plan for utilities with multiple systems of various sizes.

Comment

FNI commented that in order to create greater consistency with the process used for other WUGs, the language of 30 TAC §357.10(41)(B) and 30 TAC §357.10(41)(C) should be revised to indicate that privately-owned utilities and government entities meeting the other criteria for individual WUG status should be included unless they request to be omitted rather than if they request to be included.

Response

The Board agrees that greater consistency in the process would exist if facilities and utilities meeting the defined planning criteria were included. The language in 31 TAC §357.10(41)(B) and (C) has been revised to remove any provision of opting-in to the process. No provision to opt-out has been added as suggested by the commenter because 31 TAC §357.35(d)(1) already allows for certain entities to opt-out of the planning process.

Comment

TRWA commented that it supports the proposed changes to the Regional Water Planning rules, including lowering the threshold of acre-feet per year for Retail Public Utilities from 280 acre-feet to 100 acre-feet per year in the definition of Water User Group. This change will allow for identification of more individual water utilities that provide retail water service to communities across the state as separate water user groups. TRWA commends TWDB's utility-based approach using a single, standard, volume-based criterion to put rural and urban municipal use on an even footing regarding who is planned for and to increase the rural population that is planned for in discreet water user groups.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

TRWA commented that many of its members are non-profit water supply corporations (WSCs) or water utility districts. As proposed, WSCs are not included in any water user group sub-category, and therefore will not automatically be identified as a separate water user group. TRWA, therefore, would respectfully request that this paragraph be changed to read:

(A) Retail Public Utilities owned by a Political Subdivision or non-profit, member-owned corporation [~~public utilities~~] providing more than 100 [~~280~~] acre-feet per year for municipal or domestic use;

In the alternative, TRWA would request that a separate water user group sub-category be added to include those member-owned WSCs, without the need for a request to be submitted.

Response

The Board agrees that the definition in the proposed draft appeared to cause confusion as to what utilities meet the proposed new planning threshold. In response to this comment and to provide clarity, the adopted §357.10(41) is revised to identify privately-owned utilities as subsection (A) and water systems serving institutions or facilities owned by the state or federal government as subsection (B). Adopted subsection (C) includes all other retail public utilities not covered by subsections (A) and (B).

The revised language in subsection (C) is intended to capture non-profit water supply corporations or water utility districts, as well as any other retail public utilities not covered by subchapters (A) and (B).

Comment

The City of Austin commented that in the definition of Wholesale Water Provider (WWP), some parameters need to be added back to limit the scope of who qualifies as a wholesale water provider. Perhaps a 5-year rolling annual average volume of water delivery/sales could be specified as the benchmark. Without any parameters, the number of wholesale providers could be quite large and it could be difficult for a Regional Water Planning Group to make this determination and ensure that all providers are identified.

Response

The parameters by which WWPs are determined for inclusion in a RWP are the points of transactional information necessary to evaluate how WUG needs in the RWPA are identified and met. The flexibility afforded by the proposed new definition allows RWPGs to determine which WWPs are necessary to evaluate in their RWPA to adequately identify and meet WUG needs. No change is made in response to this comment.

Comment

FNI commented that it supports placing responsibility for identification of WWPs on the RWPG, as indicated in the proposed language of 31 TAC §357.10(42), and recommends further amending the language to allow RWPGs the option to designate WWPs based on plans to supply wholesale water in the future as well as history of supplying wholesale water.

Response

The Board appreciates the comment. A portion of the prior definition that had addressed this issue was inadvertently removed. In response to this comment, the portion of §357.10(42) is changed back to include the original portion of language to allow RWPGs to determine WWP based upon expectation to enter future contracts to deliver or sell water wholesale. The second sentence in the adopted definition of WWP reads in part: "...that the RWPG expects or recommends to enter wholesale water contracts during the period covered by the plan."

Comment

NWF, LSCSC, and GBF commented that the second sentence in the proposed revision to the definition of wholesale water provider has the unfortunate, and almost certainly unintentional, effect of suggesting that regional water planning groups should get to decide who can sell water on a wholesale basis.

NWF, LSCSC, and GBF recommend that the second sentence be rephrased to better reflect the limited nature of the decision by the RWPG.

Response

The Board agrees that an unintended implication resulted from the wording in the proposed draft rule. The Board appreciates the comment. In response to this comment, §357.10(42) has been changed in to clarify the use of WWP in the planning process. The second sentence in the adopted definition of WWP reads in part: "The RWPGs shall identify ~~determine~~ the WWP within each region to be evaluated for plan development..."

SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

SECTION 357.21. NOTICE AND PARTICIPATION

Comment

CTWC commented that §357.21 requires RWPGs to conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act. To assure that public notice and opportunity for participation is effectively and meaningfully achieved, CTWC suggests adding language clarifying that the business of RWPG Committees is also subject to the Texas Open Meetings Act, and including an item in the checklist of items that RWPGs must perform and submit to the TWDB at the conclusion of a planning cycle in which the RWPG affirms that the RWPG and its Committees have conducted their business in accordance with the Texas Open Meetings Act.

Response

The TWDB does not have statutory authority to enforce the Open Meetings Act and is not in the position to provide statutory interpretations regarding the legal obligations of other entities under the Texas Open Meetings Act. As a result, no changes have been made in response to this comment.

Comment

FNI commented that it supports proposed revisions to 31 TAC §357.21 associated with removal of the requirement for written notification of each County Clerk within the Regional Water Planning Area for certain RWPG meetings and activities and the addition of the option to post notice of meetings on the RWPG website. These revisions provide additional flexibility to the notice requirements.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

NWF, LSCSC, and GBF commented that with the proposed change, notice could be reduced only to posting on a single county bulletin board and on the Secretary of State website. A website posting by the RWPG or the host Political Subdivision should continue to be required in order to allow interested members of the public to have a reasonable chance of finding information about upcoming meetings. Postings should also be included on the Board website.

Posting on a publicly available website becomes even more important with the proposed change to Section 357.21 (b)(4) eliminating the requirement for notice to be provided to each County Clerk within the RWPA. If adequate website posting, reasonably calculated to be easily accessible to the general public, is ensured, that change might represent a reasonable reduction in burden without unduly limiting notice. However, reducing the notice to County Clerks and eliminating the requirement for website posting will result in decreased notice. If the requirement for website posting is eliminated, at minimum, the requirement for notice to all county clerks within the RWPA should be retained.

These same comments also apply for proposed amendments to Sections 357.21 (c)(5)(A) and 357.21 (d)(6)(A). In each instance, the requirement to post notices to a website for either the RWPG or the host subdivision should be retained and should be combined with notice on the TWDB website.

CTWC commented that there are proposed revisions in several of the rules that may result in decreased public notice. CTWC requests that the following provisions be clarified to assure that public notice does not occur solely via mailing meeting notices to the County Clerk of the county in which the administrative office of the host Political Subdivision is located. In all cases, at a minimum, notices should be posted on the website of the RWPG or host Political Subdivision. In addition, notice should be made as prescribed in the rules, and persons or entities that have requested notice of RWPG activities should also receive public notices. More specifically, the language in the proposed rules, as it appears in §§357.21(b)(5)(A), 357.21(c)(5)(A), and 357.21(d)(6)(A), should be revised to disallow RWPGs from mailing a notice to a County Clerk in lieu of posting that notice on its website. Please revise to assure that the RWPG's notices are posted on an RWPG website, where interested persons are most likely to look for such information.

Response

The proposed draft amendment to §357.21 was intended to implement changes consistent with HB 3357, 84th Legislative Session, which allows a political subdivision or district to post notice of its meetings on its website as an alternative to providing notice to the county clerk of the county in which its administrative offices are located. The Board acknowledges that while an RWPG is not a political subdivision or district, many of the administrators for the planning groups are, and notes that a number of these political subdivisions had asked for flexibility in notice requirements.

The Board agrees that if a RWPG only provided the notice and agenda of an RWPG meeting to the county clerk of the county in which the administrative office of its host political subdivision is located, and stopped posting on their website, that notice could, arguably, be reduced. The adopted rule has been changed to give RWPGs the option to post the notice and agenda of an RWPG meeting on its website or that of its host political subdivision, or to provide the notice and agenda to each county clerk in its RWPA. The adopted rule affords RWPGs the flexibility and broad coverage of posting on its website, while retaining the previous rule requirement of providing notice to each county clerk in the RWPA, if the RWPG should opt not to post on its website. This change is intended to give RWPGs flexibility in notice requirements without unduly limiting notice, consistent with the spirit of changes put in place by HB 3357. The Board will continue to maintain its current webpage of RWPG meeting dates.

Sections 357.21(b)(5)(A), 357.21(c)(5)(A), and 357.21(d)(6)(A) have been changed in response to this comment.

Comment

FNI commented that it recommends that TWDB designate municipalities partially in the region for the purpose of notice and add language to this effect to the requirements under the proposed 31 TAC §357.21(e)(4).

Response

The Board agrees that clarification of notice requirements for entities split between planning regions is appropriate. The rule is revised in response to this comment to clarify that notice shall be mailed to both qualifying entities. The adopted rule language is: “Each mayor of a municipality, located in whole or in part in the RWPA, 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;~~”. The rule has been changed in response to this comment. This change was also applied to adopted §357.21(d)(5)(B) for clarity and consistency.

SECTION 357.22. GENERAL CONSIDERATIONS FOR DEVELOPMENT OF REGIONAL WATER PLANS

Comment

TWCA commented that in proposed §357.22(13), the proposed rule adds the provision that potential impacts on public health, safety, and welfare shall be considered by the planning

group when developing the regional water plan. TWCA recommends that TWDB promulgate guidance on what constitutes the range of “public health, safety, and welfare” considerations that a regional water planning group might include.

Response

SB 1101, 84th Legislative Session, requires that each RWPG must submit an RWP that includes consideration of potential impacts on public health, safety, or welfare in the state. The rule change is intended to include that statutory requirement into rule. The Board is not in a position to prescribe how each planning group considers these factors. Each planning group shall address these factors as they deem appropriate. No change has been made in response to this comment.

Comment

LCRA commented that proposed §357.22(13) adds the provision that potential impacts on public health, safety, and welfare shall be considered by the planning group when developing the regional water plan. Regarding the public welfare provision, it is unclear how the proposed rule intersects with 357.33(c) that requires the social and economic impacts of not meeting water needs be evaluated and reported. Please clarify that the scope of 357.22 (13) regarding public welfare is covered by 357.33(c) for unmet needs. For met water needs, it is requested that the rule be clarified that there are no impacts to public welfare, and in the absence of that, it is requested that the rule be expanded to include the potential impacts that should be evaluated.

Response

SB 1101, 84th Legislative Session, requires that each RWPG must submit an RWP that includes consideration of potential impacts on public health, safety, or welfare in the state. The rule change is intended to include that statutory requirement into rule. The Board is not in a position to prescribe how each planning group considers these factors. Each planning group shall address these factors as they deem appropriate. No change has been made in response to this comment.

Comment

NWF, LSCSC, and GBF commented that TWDB should add new Subsections §357.22(a)(14), (15), (16), and (17) to read as follows: (14) water conservation best management practices available on the TWDB website; (15) quantified target goals for water conservation jointly developed by TWDB and TCEQ pursuant to Section 11.1271(d); (16) for proposed interbasin transfers, model water conservation programs jointly developed by TWDB and TCEQ suggesting best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each type of water supplier; (17) environmental flow regime recommendations prepared by Bay and Basin Expert Science Teams, pursuant to Texas Water Code Section 11.02362(m), for river basin and bay systems located in whole or in part within the relevant planning area.

Among relevant information sources that RWPGs should be required to consider are the most current versions of the Water Conservation Best Management Practices available on the TWDB website. Although Section 357.34 (g)(2) requires RWPGs to consider potentially applicable

best management practices for each identified water need, it also would be appropriate to include the specific BMPs listed on the website in the universe of information specifically required to be considered.

In addition, Section 16.053 (h)(7)(B) of the Water Code directs that regional water plans must include, at a minimum, water conservation measures incorporating the provisions of Water Code Sections 11.1271 and 11.1272. Sections 357.34 (g)(1) and (2) address certain aspects of those statutory provisions. However, Water Code Section 11.1271(d) directs TWDB and TCEQ jointly to identify quantified target goals for water conservation. It is not evident that those target goals have been identified, particularly for the full universe of water users. Consistent with Water Code Section 11.1271(d), those targets must be identified and, consistent with Water Code Section 16.053 (h)(7)(B), the planning rules must direct RWPGs to, at a minimum, consider those target goals as guidelines in their efforts.

Similarly, Water Code Section 11.1271(e) directs TWDB and TCEQ jointly to “develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.” Those model programs have not been developed. Those programs must be developed and the planning rules must direct RWPGs to, at a minimum, consider those model programs in their efforts.

RWPGs are required to identify threats to natural resources associated with water availability. The planning rules do require that evaluations of proposed water management strategies contemplating new appropriations must assume compliance with environmental flow standards that apply to such appropriations. While that requirement provides for reasonable consistency of the planning process with anticipated state permitting requirements when assessing the amount of water potentially available from a new appropriation, it does nothing to inform assessment of threats to natural resources posed by inadequate levels of streamflow resulting from use of current water rights or the combination of current rights and recommended projects. A meaningful assessment of threats to natural resources must consider such impacts. Existing water availability models and groundwater availability models allow for such evaluations. However, planning groups do need information about levels of flow needed to protect natural resources to inform such evaluations. The Bay and Basin Expert Science Teams did undertake, as part of the Senate Bill 3 environmental flows process, an evaluation for many areas of the state of the flow levels adequate to protect a sound ecological environment and maintain key aquatic habitats. RWPGs should be required to consider those reports for purposes of considering consistency with long-term protection of natural resources.

Response

The Board notes that these comments are not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The Legislature made it clear that a water right holder need not use the quantified target goals, developed by the Commission and Board, when the water right holder prepares its water conservation plan. First TWC §11.1271(d) provided that the water right holder “may use” the agency developed target goals. “May” creates discretionary authority. Use of the word “shall” would indicate that the water right holder had a duty to use the agency created target goals.

See, Code Construction Act, Texas Government Code §311.016. Second, that subsection specifically provides that the goals are not enforceable requirements.

Because §11.1271(d) gives ultimate responsibility for the targets and goals with the water right holder, the Board is of the opinion that harmonizing TWC §11.1271(d) together with TWC §16.053(h)(7)(B) does not require the RWPGs to consider those the agency developed target goals when developing the regional plans. Because there is such a variety of types of water users that develop water conservation plans, the agencies allow the water users to choose their own goals and standards as informed by the Water Conservation Task Force's report and any modifications thereof by the Water Conservation Advisory Council. RWPGs remain free to consider the target goals when developing their plans. Similarly the RWPGs may consider the water conservation plan and drought management plan information developed by the Commission and Board and the best management practices for water conservation available on the Commission and Board's websites.

The RWPGs also have discretion to consider BBEST studies, environmental flow studies performed by the agencies, as well as other relevant materials as the RWPGs perform their statutory duties under TWC §16.053. No changes to the rule were made in response to these comments.

SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

SECTION 357.30. DESCRIPTION OF THE REGIONAL WATER PLANNING AREA

Comment

NWF, LSCSC, and GBF commented that §357.30(7) should be amended to read as follows: "identified threats to agricultural and natural resources due to water quantity problems, including an assessment of potential failure to maintain stream and river flows and freshwater inflows adequate to support domestic and livestock uses while also supporting a sound ecological environment and maintaining the productivity of aquatic habitats, or water quality problems related to water supply;".

Texas Water Code Section 16.053 (h)(7)(C) establishes an explicit prerequisite for approval of regional water plans that the plan must be determined to be consistent with long-term protection of the state's natural resources. The requirement that regional plans must protect natural resources of the specific region is also set out in subsection (a) of that provision.

A plan that recommends new water supply strategies for municipal, industrial, and agricultural water needs that comply with environmental flow standards but that, because of already existing water rights, does not provide for flows adequate to support natural resource protection on a long-term basis does not comply with statutory requirements. Absent a comprehensive evaluation of resulting flows, a regional plan cannot meet the consistency test established by the legislature.

In order to meaningfully consider consistency, there must first be a meaningful assessment of water-related threats to natural resources. That, also, is largely lacking from regional water plans. That absence, likely, is primarily a result of the lack of clear direction from TWDB

regarding the need for such an assessment and of directions about potential approaches for undertaking it.

A key shortcoming is the failure of most regional plans to evaluate what future level of stream and river flows or freshwater inflows would be expected considering the effects of existing, authorized, and proposed surface diversions and impoundments combined with the effects of existing, authorized, and proposed groundwater pumping. Even where a flow evaluation is included, the analysis of the adequacy of the flows to protect natural resources is lacking. As a result, the plans do not comply with statutory requirements and the rules must be amended to address that shortcoming.

The Region D WPG incorporated voluntary flow guidelines and has begun considering strategies for meeting them. The TWDB rules should be amended to facilitate and support those efforts. Threats from inadequate instream and freshwater inflows are not being analyzed in regional plans in any comprehensive manner.

The rules proposed and adopted in 2012 and the rules proposed for adoption now are not adequate to correct that deficiency. The requirement in Section 357.35(c), at least as implemented, for selecting individual water management strategies consistent with long-term protection is not an adequate substitute for a comprehensive evaluation of future flows both with and without the recommended strategies. There is no way to ensure that individual strategies are consistent without understanding what resulting flows are expected to be.

Response

The Board notes that these comments are not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. As referenced in the comment, TWC §16.053(a) requires that RWPs shall provide for the orderly development, management, and conservation of water resources; yet this must be accomplished while protecting existing water rights (TWC §16.053(e)(5)(D)).

The guidance principle (31 TAC §358.3(23)) does state that RWPGs are to give consideration of environmental water needs including instream flows and bay and estuary inflows, including adjustments to water management strategies. Such consideration must be consistent with environmental flow standards where adopted. TWDB rules (31 TAC §358.3(22)) require that environmental flow standards adopted by the TCEQ must be accommodated by recommended strategies in the RWPs, 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 are used.

Regional water planning groups are required to develop and recommend water management strategies for all WUGs and WWPs with identified needs (31 TAC §357.35(d)). The location of study results from the SB2 and SB3 programs remain available on the TWDB website for

consideration during RWP development. No changes to the rule were made in response to these comments.

Comment

NWF, LSCSC, and GBF commented that in the proposed amendment to Section 357.30 (12), the effort to replace “will” with “shall” throughout the rule language when a mandatory duty was intended appears to have been inadvertently triggered here. In this instance, no mandatory duty is involved and “will” should be retained. Merely discussing how individual WMSs might affect threats to agricultural or natural resources is insufficient to address the statutory requirement for plans that are consistent with protecting agricultural or natural resources and an identification of the effect of the overall plan also is needed.

Response

The Board agrees that, in the attempt to standardize language in the proposed draft of the rule, an inadvertent implication of a mandatory duty resulted. The Board appreciates the comment and §357.30(12) has been revised as suggested.

SECTION 357.31. PROJECTED POPULATION AND WATER DEMANDS

Comment

LCRA and TWCA commented that in proposed §357.31(c), regional water plans shall evaluate the current contractual obligations of WUGs and WWP in addition to any demands projected for the WUG or WWP. The scope of this evaluation should not include an open-ended evaluation of all contract terms, but rather should be limited to determining amount of water secured by the contract and the duration of the contract, which is the information necessary for developing the regional water plan.

Response

By proposing language that states RWPs would evaluate (rather than report) contract terms, the Board’s intent was to remove nonessential reporting requirements, not to require an open-ended evaluation of all contract terms. The Board appreciates the comment and has modified the rule in response to this comment. Section 357.31(c) now specifies that contract terms to be evaluated include only the amount of water secured by the contract and the duration of the contract.

SECTION 357.32. WATER SUPPLY ANALYSIS

Comment

FNI commented that it recommends revising the wording of 31 TAC §357.32(c) to require consideration of sedimentation specifically for determining source water availability for reservoir supplies rather than for all surface water supplies. While assuming storage loss

through sedimentation provides a conservative assumption for reservoir supply availability, in some cases it may also result in an increase in modeled reliability of run-of-river supplies. Because sedimentation could potentially be mitigated in the future through sediment removal activities by the reservoir water right holder or through flushing during large flow events, these modeled increases in run-of-river source availability may not be dependable.

Response

The Board agrees that anticipated sedimentation is only relevant to stored water and has removed the words "use anticipated sedimentation" from §357.32(c) in response to this comment. Because §357.32(c)(1) requires that evaluation of stored surface water be based on Firm Yield, and the definition of Firm Yield specifies the use of anticipated sedimentation, anticipated sedimentation is still applicable to the evaluation of existing stored water.

Comment

FNI commented that during the development of the 2016 RWP, the *First Amended General Guidelines for Regional Water Plan Development* specified that "the use-appropriate monthly percentage of the annual firm diversion must be satisfied in each and every month of the simulation period" for determination of firm run-of-river source availability. This requirement was found to be overly conservative for a number of situations, including non-municipal uses such as irrigation with the potential to adjust timing of water needs and municipal entities with unmodeled storage or a diversified supply portfolio. FNI finds the more flexible requirement in the proposed language of 31 TAC §357.32(c)(2) to be an improvement to the guidance for the 2016 RWP.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

SECTION 357.34. IDENTIFICATION AND EVALUATION OF POTENTIALLY FEASIBLE WATER MANAGEMENT STRATEGIES AND WATER MANAGEMENT STRATEGY PROJECTS

Comment

LCRA, TWCA, and City of Marble Falls commented that §357.34(c)(4) should be revised to confirm that reuse projects requiring infrastructure to extend a distribution and delivery system (i.e., "purple pipe", etc.) are potentially feasible WMS and meet the definition of §357.34(d).

LCRA and City of Marble Falls commented that this is important in areas such as the Highland Lakes where there is a prohibition to discharge wastewater return flows and therefore return flows do not add to the downstream water supply. In this case, reuse of wastewater becomes a new source of water. Distribution and delivery of the new source to end users is an important aspect of the WMS.

Response

The Board notes that these comments are not in response to any specific proposed rule change, but rather the comments are requesting the addition of a new rule. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

The Board acknowledges these comments and will clarify, as necessary, through guidance what reuse-related projects may be incorporated into the RWPs. No changes to the rule were made in response to these comments.

Comment

NWF, LSCSC, and GBF commented that Section 357.34 (d) should make clear that RWPGs have authority to recommend various approaches to address environmental water needs that are not associated with an individual WUGs or WWPs. Indeed, in many instances, such approaches likely will be needed in order to develop plans that are consistent with the long-term protection of natural resources. NWF, LSCSC, and GBF recommend that the text "voluntary water right acquisitions or other affirmative measures to maintain environmental flows" be added to the list of RWPG recommendations that may be identified separate from recommended WMSs and WMSPs in an RWP.

Response

The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not specifically grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes that a bottom-up approach whereby the RWPGs may make their own decisions in developing the RWPs is more appropriate. TWC §16.053(a) requires that RWPs shall provide for the orderly development, management, and conservation of water resources; yet this must be accomplished while protecting existing water rights (TWC §16.053(e)(5)(D)).

Additionally, TWC §16.053(h)(7)(C) requires that the Board approve a RWP only after it determines that the plan is consistent with the long-term protection of water, agricultural, and natural resources as embodied in the guidance principles established by the TWDB. In those guidance principles (31 TAC §358.3(23)), RWPGs are to give consideration of environmental water needs including instream flows and bay and estuary inflows, including adjustments to water management strategies. Such consideration must be consistent with environmental flow standards where adopted. Additionally, 31 TAC §357.35(b) and (c) require that planning groups recommend water management strategies that are environmentally sensitive and consistent with the protection of the state's water, agricultural, and natural resources.

The Board encourages participation in the regional water planning process and encourages the commenters to direct these comments to the RWPGs. No changes have been made in response to these comments.

Comment

NWF, LSCSC, and GBF commented that no single factor is more important than achieving increased water efficiency in terms of meeting water needs for specific WUGs while also

achieving long-term protection of the state's water resources, agricultural resources, and natural resources. To that end, further refinements are needed in Sections 357.34 (g)(2)(A), (C), and (D). The requirements of existing TCEQ rules implementing Water Code Sections 11.1271 and 13.146 are not sufficiently specific to provide meaningful consistency guidance for RWPGs. Best management practices, on the other hand, are designed to provide quantifiable results for implementing the types of measures referenced in the TCEQ rules. Accordingly, Section 357.34 (g)(2)(A), as proposed to be amended, should be revised to require water conservation practices consistent with BMPs included on the TWDB website unless the RWP justifies the failure to incorporate specific BMPs.

For interbasin transfers, the current requirements are not consistent with Sections 11.085(l)(2) and 11.1271(e) of the Water Code. Section 11.085(l)(2) refers to highest practicable levels of water conservation and efficiency achievable. That construction recognizes that water conservation and efficiency are not necessarily the same thing and that both must be considered. The rule should be made consistent with the statutory language. Section 11.1271(e) specifically directs TWDB and TCEQ jointly to develop model water conservation programs that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier. Those model programs should be developed and the rules should incorporate them as relevant factors in evaluating the adequacy of levels of water conservation and efficiency for proposed interbasin transfers. In addition, consistent with the stringent statutory language, full implementation of best management practices should be required absent a demonstration that a particular BMP is not achievable. Section 357.34 (g)(2)(C), as proposed to be amended, should be revised to require consistency with model water conservation programs and with BMPs.

High levels of water loss are inconsistent with the goal of the water planning process to meet water needs for specific WUGs while also achieving long-term protection of the state's water resources, agricultural resources, and natural resources. Accordingly, Section 357.34 (g)(2)(D) should be revised to require RWPGs to include measures to reduce water loss for WUGs or WPGs with water loss of greater than 10 percent.

Response

The Board notes that portions of these comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

Best Management Practices are a useful tool for RWPGs to use; however, requiring that the impact of conservation practices be consistent with relevant best management practices is beyond statutory authority. The TWDB defers to the Legislature on questions of statutory requirements. Where statute does not grant the TWDB authority to impose certain requirements on RWPGs, the TWDB believes it is not appropriate to demand those requirements.

Because there are many types of water users that develop water conservation plans, they must be able to choose their own goals and standards, those programs are not one size fits all. Individual systems must have the flexibility to implement the elements appropriate for their system. The agencies allow water users to choose their own goals and standards as informed by the Water Conservation Task Force's report and any modifications thereof by the Water Conservation Advisory Council.

The Legislature made it clear that a water right holder need not use the quantified target goals, developed by the Commission and Board, when the water right holder prepares its water conservation plan. First, TWC §11.1271(d) provided that the water right holder “may use” the agency developed target goals. “May” creates discretionary authority. Use of the word “shall” would indicate that the water right holder had a duty to use the agency created target goals. See, Code Construction Act, Texas Government Code §311.016. Second, that subsection specifically provides that the goals are not enforceable requirements.

Because TWC §11.1271(d) gives ultimate responsibility for the targets and goals with the water right holder, the Board is of the opinion that harmonizing TWC §11.1271(d) together with TWC §16.053(h)(7)(B) does not *require* the RWPGs to consider agency developed target goals when developing the regional plans.

RWPGs remain free to consider the target goals when developing their plans. Similarly the RWPGs may consider the water conservation plan and drought management plan information developed by the Commission and Board and the best management practices for water conservation available on the Commission and Board’s websites.

Regarding the comment to change the word "level" to "levels" in §357.34(g)(2)(C), although §11.085(l) uses "levels" and the rule uses "level", in context, the meaning is considered the same.

The Board declines to require mandatory strategies to address water loss greater than 10 percent. Water loss, expressed as a percentage, is not the best way to evaluate potential problems because the volume and value of water can vary depending on the size of the utility. Current rules (31 TAC §357.34(g)(2)(D)) as adopted) require that RWPGs shall consider strategies to address any issues identified in the information compiled by the TWDB from water loss audits performed by retail public utilities. Over 25 percent of all recommended strategy supplies in the 2017 State Water Plan were from conservation strategies, a portion of which is to reduce water loss. No changes to the rule were made in response to these comments.

SECTION 357.35. RECOMMENDED AND ALTERNATIVE WATER MANAGEMENT STRATEGIES AND WATER MANAGEMENT STRATEGY PROJECTS

Comment

NWF, LSCSC, and GBF commented that the use of excessive planning safety factors, or management supply factors, undermines the usefulness and the credibility of the water planning process. Plans become justifiably viewed as a collection of project wish lists rather than an actual meaningful plan. At least absent some compelling justification, an upper limit on such over-planning is needed. NWF, LSCSC, and GBF recommend capping the management supply factor at 1.1 unless the RWPG demonstrates to the Executive Administrator that extenuating circumstances justify its use and that its inclusion will not result in potential adverse impacts to the long-term protection of the state’s water resources, agricultural resources, or natural resources.

Response

The Board notes that these comments are not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rule. The comments do not address the topics outlined in the stated purpose of the rulemaking published in the Texas Register on August 5, 2016.

Additionally, neither the TWDB rules nor statute prohibit recommended water management strategies that, if implemented, may provide water volumes in excess of projected needs. Additionally, the inclusion of a recommended water management strategy or project in a 50-year plan does not offer any guarantee that the strategy or project will be implemented. The “management supply factor” that is now required to be calculated and reported for each WUG, as required under 31 TAC §357.35(g), provides information regarding how much water supply each WUG has been assigned. This information may support dialogue within a planning group regarding how best to balance recommendations for additional supplies with various risks and uncertainties, for example, including that some projects may not be permitted or implemented. The TWDB performed a detailed, statewide accounting of existing and future water supplies assigned in all the RWPs and determined that the recommended water management strategies in the RWPs and state water plan do not over allocate any water sources. No changes to the rule were made in response to these comments.

SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS
SECTION 357.60. CONSISTENCY OF REGIONAL WATER PLANS

Comment

TCPS commented that TWDB should reconsider the changes to Subchapter F regarding consistency for funding. The simple change from “and” to “or” in 357(b)(2) is very significant. This, together with the existing language, is turning the “consistency” determination into a test of “not inconsistent.” The RWPGs should be given the role of deciding what is best for them. There may be very valid bases for the strategy recommendations of a RWPG. The proposed change could make it easier for TWDB to fund projects that were rejected, or at least not identified as the recommended strategies, by the RWPG.

Response

The board notes that the commenter refers to §357(b)(2), which is not a valid rule citation. The response addresses the comment assuming that it is regarding §357.60(b)(2), which appears to be the rule described by the commenter.

As previously written, the word "and" in previous §357.60(b)(2) inadvertently excluded projects that did not also involve minor modifications to an existing surface water right. The intent of this change is to correct this previous administrative error. The Board agrees that it is the RWPG's role to recommend water management strategies, but does not agree that this rule will result in the funding of projects rejected or not recommended by the RWPG. The rule has not been changed as a result of this comment.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.053.

The adopted rulemaking affects Chapter 16 of the Texas Water Code.

<rule>

§357.10. Definitions and Acronyms.

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

- (1) Agricultural Water Conservation--Defined in §363.1302 of this title (relating to Definition of Terms).
- (2) 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.
- (3) Availability--Maximum amount of raw water that could be produced by a source during a repeat of the Drought of Record, regardless of whether the supply is physically connected to or legally accessible by Water User Groups.
- (4) Board--The Texas Water Development Board.
- (5) 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.
- (6) Commission--The Texas Commission on Environmental Quality.
- (7) County-Other--An aggregation of utilities and individual water users within a county and not included in Subsections §357.10(41)(A) - (D).
- (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 Management Water Management Strategy--A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.
- (11) Drought of Record--The period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.
- (12) Executive Administrator (EA)--The Executive Administrator of the Board or a designated representative.

(13) Existing Water Supply--Maximum amount of water that is physically and legally accessible from existing sources for immediate use by a Water User Group under a repeat of Drought of Record conditions.

(14) Firm Yield--Maximum water volume a reservoir can provide each year under a repeat of the Drought of Record using anticipated sedimentation rates and assuming that all senior water rights will be totally utilized and all applicable permit conditions met.

(15) 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.

(16) Interregional Conflict--An interregional conflict exists when:

(A) more than one Regional Water Plan includes the same source of water supply for identified and quantified recommended Water Management Strategies and there is insufficient water available to implement such Water Management Strategies; or

(B) in the instance of a recommended Water Management Strategy proposed to be supplied from a different Regional Water Planning Area, the Regional Water Planning Group with the location of the strategy has studied the impacts of the recommended Water Management Strategy on its economic, agricultural, and natural resources, and demonstrates to the Board that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(17) Intraregional Conflict--A conflict between two or more identified, quantified, and recommended Water Management Strategies in the same Initially Prepared Plan that rely upon the same water source, so that there is not sufficient water available to fully implement all Water Management Strategies and thereby creating an over-allocation of that source.

(18) Initially Prepared Plan (IPP)--Draft Regional Water Plan that is 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.

(19) Major Water Provider (MWP)--A Water User Group or a Wholesale Water Provider of particular significance to the region's water supply as determined by the Regional Water Planning Group. This may include public or private entities that provide water for any water use category.

(20) Modeled Available Groundwater (MAG) Peak Factor--A percentage (e.g., greater than 100 percent) that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, for planning purposes, shall be considered temporarily available for pumping consistent with desired future conditions. The approval of a MAG Peak Factor is not intended as a limit to permits or as guaranteed approval or pre-approval of any future permit application.

(21) Planning Decades--Temporal snapshots of conditions anticipated to occur and presented at

even intervals over the planning horizon used to present simultaneous demands, supplies, needs, and strategy volume data. A Water Management Strategy that is shown as providing a supply in the 2040 decade, for example, is assumed to come online in or prior to the year 2040.

(22) 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).

(23) 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.

(24) Regional Water Planning Area (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(25) Regional Water Planning Group (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(26) RWPG-Estimated Groundwater Availability--The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.

(27) 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."

(28) Reuse--Defined in §363.1302 of this title (relating to Definition of Terms).

(29) 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).

(30) 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).

(31) 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).

(32) State Water Planning Database--Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect,

analyze, and disseminate regional and statewide water planning data.

(33) Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(34) Water Conservation Measures--Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies.

(35) Water Conservation 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 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 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.

(36) Water Conservation Strategy--A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

(37) Water Demand--Volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.

(38) Water Management Strategy (WMS)--A plan to meet a need for additional water by a discrete Water User Group, which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands. A Water Management Strategy may or may not require associated Water Management Strategy Projects to be implemented.

(39) Water Management Strategy Project (WMSP)--Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs.

(40) Water Need--A potential water supply shortage based on the difference between projected Water Demands and Existing Water Supplies.

(41) Water User Group (WUG)--Identified user or group of users for which Water Demands and Existing Water Supplies have been identified and analyzed and plans developed to meet Water Needs. These include:

(A) Privately-owned utilities that provide an average of more than 100 acre-feet per year for municipal use for all owned water systems;

(B) Water systems serving institutions or facilities owned by the state or federal government that provide more than 100 acre-feet per year for municipal use;

(C) All other Retail Public Utilities not covered in paragraphs (A) and (B) that provide more than 100 acre-feet per year for municipal use;

(D) Collective Reporting Units, or groups of Retail Public Utilities that have a common association and are requested for inclusion by the RWPG;

(E) Municipal and domestic water use, referred to as County-Other, not included in paragraphs (A) – (D) of this subsection; and

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

(42) Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that delivers or sells water wholesale (treated or raw) to WUGs or other WWPs or that the RWPG expects or recommends to deliver or sell water wholesale to WUGs or other WWPs during the period covered by the plan. The RWPGs shall identify the WWPs within each region to be evaluated for plan development.

§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 EA. 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 an RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs 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 RWPAs;

(5) Political Subdivision boundaries;

(6) Public comment; and

(7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG 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 EA 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 EA. 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 RWPs 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 representative of each of the following interest categories as voting members of the RWPG. However, if an 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 an 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 an 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) An RWPG shall hold a public meeting to determine the process for identifying potentially feasible WMSs; 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 WMSs that are potentially feasible for meeting a Water 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 an RWPG determines in its analysis of Water Needs that it has sufficient Existing Water 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 Existing Water Supplies that are available for voluntary redistribution in an RWPA or to other RWPAs;

(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 an RWP that meets rule and statute 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 WMSs; meetings to replace RWPG members or addition of new RWPG members; and adoption of RWPs.

(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 in writing include:

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

(B) any person or entity who has requested notice of RWPG activities.

(5) Notice and agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; 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 WMSs; 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 in writing include:

- (A) all voting and non-voting RWPG members;
- (B) any person or entity who has requested notice of RWPG activities; and
- (C) each RWPG where a recommended or Alternative WMS being considered would be located.

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

- (A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; 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; and holding hearings for IPPs.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(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 (7)(A) of this subsection.

(4) 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 electronic media, through an internet web link, 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. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(5) 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, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(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; and

(E) 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

(F) 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.

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

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA;

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

(7) 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 an 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 an RWP or adopting a major amendment to an RWP.

(ii) Comments associated with a preplanning meeting must be considered prior to taking RWPG action.

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

(1) These notice requirements apply when an RWPG is 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 at least 30 days prior to Board consideration of funding applications.

(3) 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 RWPA; 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.

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

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

(B) Each county judge of a county located in whole or in part in the RWPA;

(C) 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; and

(D) All other RWPGs.

(5) Notice shall also be posted on the website of the RWPG or host Political Subdivision.

§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 RWP. 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;
- (13) potential impacts on public health, safety, or welfare; and
- (14) any other information available from existing local or regional water planning studies.

(b) 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, and 357.50 of this title and shall also contain a separate chapter for the contents of §357.34 and §§357.35, 357.40 and 357.41 of this title for a total of eleven separate chapters.

§357.30. Description of the Regional Water Planning Area.

RWPGs shall describe their RWPA 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) Major 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 WMSs 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 MWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for the RWPA.

(c) RWPs shall evaluate the current contractual obligations of WUGs and WWP 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. The evaluation of contractual obligations under this subsection is limited to determining the amount of water secured by the contract and the duration of the contract.

(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 shall 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 shall 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 an RWPG for revision of population or Water Demand projections.

(f) Population and Water Demand projections shall be presented for each Planning Decade for WUGs and MWPs.

§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) For surface water supply analyses, RWPGs shall use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. As the default approach for evaluating existing supplies, RWPGs shall assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use better, more representative, 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 and approved in writing by the EA.

(1) Evaluation of existing stored surface water available during Drought of Record conditions 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 an RWPG to use procedures other than Firm Yield.

(2) Evaluation of existing run of river surface water available for municipal WUGs during Drought of Record conditions shall be based on the minimum monthly diversion amounts that are available 100 percent of the time, if those run of river supplies are the only supply for the municipal WUG.

(d) RWPGs shall use modeled available groundwater volumes for groundwater Availability, as issued by the EA, 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.

(1) An RWP is consistent with a desired future condition if the groundwater Availability amount in the RWP and on which an Existing Water Supply or recommended WMS relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers, in accordance with paragraph (2) of this subsection or as modified by paragraph (3) of this subsection, if applicable. 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 RWPG, a desired future condition adopted on a subsequent date.

(2) If no groundwater conservation district exists within the RWPA, then the RWPG shall determine the Availability of groundwater for regional planning purposes. The Board shall review and consider approving the RWPG-Estimated Groundwater Availability, prior to inclusion in the IPP, including determining if the estimate is physically compatible with the desired future conditions for relevant aquifers in groundwater conservation districts in the co-located groundwater management area or areas. The EA shall use the Board's groundwater availability models as appropriate to conduct the compatibility review.

(3) In RWPAs that have at least one groundwater conservation district, the EA shall consider a written request from an RWPG to apply a MAG Peak Factor in the form of a percentage (e.g., greater than 100 percent) applied to the modeled available groundwater value of any particular aquifer-region-county-basin split within the jurisdiction of a groundwater conservation district, or groundwater management area if no groundwater conservation district exists, to allow temporary increases in annual availability for planning purposes. The request must:

(A) Include written approval from the groundwater conservation district, if a groundwater conservation district exists in the particular aquifer-region-county-basin split, and from representatives of the groundwater management area; and

(B) Provide the technical basis for the request in sufficient detail to support groundwater conservation district, groundwater management area, and EA evaluation; and

(C) Document the basis for how the temporary availability increase will not prevent the groundwater conservation district from managing groundwater resources to achieve the desired future condition.

(e) RWPGs shall evaluate the Existing Water Supplies for each WUG and WWP.

(f) Water supplies based on contracted agreements shall 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 MWP in accordance with §357.31(b) of this title.

§357.33. Needs Analysis: Comparison of Water Supplies and Demands.

(a) RWPs 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 WWP 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 shall be reported for WUGs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in an RWPA. Results shall be reported for MWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for the RWPA.

(c) The social and economic impacts of not meeting Water Needs shall be evaluated by RWPGs and reported for each RWPA.

(d) Results of evaluations shall be reported by WUG in accordance with §357.31(a) of this title and MWP in accordance with §357.31(b) of this title.

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

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

(a) RWPGs shall identify and evaluate potentially feasible WMSs and the WMSPs required to implement those strategies for all WUGs and WWP with identified Water Needs.

(b) RWPGs shall identify potentially feasible WMSs 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 WWP. The strategies shall meet new water supply obligations necessary to implement recommended WMSs of WWP and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWPs, RWPGs shall provide WMSs to be used

during a Drought of Record.

(c) Potentially feasible WMSs 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, seawater desalination, brackish groundwater 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) All recommended WMSs and WMSPs that are entered into the State Water Planning Database and prioritized by RWPGs shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one planning decade such that additional water is available during Drought of Record conditions.

Any other RWPG recommendations regarding permit modifications, operational changes, and/or other infrastructure that are not designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one Planning Decade such that additional water is available during Drought of Record conditions shall be indicated as such and presented separately in the RWP and shall not be eligible for funding from the State Water Implementation Fund for Texas.

(e) Evaluations of potentially feasible WMSs and associated WMSPs shall include the following analyses:

(1) For the purpose of evaluating potentially feasible WMSs, 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 shall consider a written request from an 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 WMSs 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 shall include consideration of the Commission's adopted environmental flow standards under 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water). If environmental flow standards have not been established, then environmental 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 WMSs are adjusted to provide for 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 WMSs 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 WMSs 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 shall 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 WMSs on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing

conditions with the recommended WMSs 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.

(f) RWPGs shall evaluate and present potentially feasible WMSs and WMSPs 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.

(g) 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 WMSs. RWPGs shall incorporate water conservation planning and drought contingency planning in the RWPA.

(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 an 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. 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 shall include a Water Conservation Strategy, pursuant to Texas Water Code §11.085(l), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall 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 shall develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall 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 shall 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 shall 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).

(h) 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 and Water Management Strategy Projects.

(a) RWPGs shall recommend WMSs and the WMSPs required to implement those WMSs to be used during a Drought of Record based on the potentially feasible WMSs evaluated under §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects).

(b) RWPGs shall recommend specific WMSs and WMSPs based upon the identification, analysis, and comparison of WMSs by the RWPG that the RWPG determines are potentially feasible so that the cost effective WMSs that are environmentally sensitive are considered and adopted unless an RWPG demonstrates that adoption of such WMSs is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs shall follow processes described in §357.34 of this title. The RWP may include Alternative WMSs evaluated by the processes described in §357.34 of this title.

(c) Strategies shall be selected by the RWPGs so that cost effective WMSs, 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 WMSs 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 WMS is feasible. In such cases, RWPGs must explain why no WMSs 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 WMSs to meet an identified need shall 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 WMSs, recommended WMSPs, and the associated results of all the potentially feasible WMS evaluations by WUG and MWP. If a WUG lies in one or more counties or RWPA's or river basins, data shall be reported for each river basin, RWPA, and county.

(2) Calculated planning management supply factors for each WUG and MWP included in the RWP assuming all recommended WMSs are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended WMSs for each entity; divided by that entity's total projected Water Demand, within the Planning Decade. The resulting calculated management supply factor shall be presented in the plan by entity and decade for every WUG and MWP. Calculating planning management supply factors is for reporting purposes only.

(3) Fully evaluated Alternative WMSs and associated WMSPs included in the adopted RWP shall be presented together in one place in the RWP.

§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(e)(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 WMSs and groundwater and surface water interrelationships pursuant to §357.34(e)(4) of this title;

(3) Threats to agricultural and natural resources identified pursuant to §357.34(e)(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(e)(7) of this title;

(5) Major impacts of recommended WMSs on key parameters of water quality pursuant to §357.34(e)(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.

§357.42. 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 shall 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 shall 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 WMSs;

(2) List and description of alternative Drought Management WMSs 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 WMSs;

(3) List of all potentially feasible Drought Management WMSs 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) An 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 WMSs. 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. An 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 WMSs and associated WMSPs.

§357.45. Implementation and Comparison to Previous Regional Water Plan.

(a) RWPGs shall describe the level of implementation of previously recommended WMSs. Information on the progress of implementation of all WMSs that were recommended in the previous RWP, including conservation and Drought Management WMSs; and the implementation of WMSPs 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 WWP; and

(4) Recommended and Alternative WMSs and WMSPs.

§357.46. Prioritization of Projects by Regional Water Planning Groups.

Each RWPG shall prioritize recommended WMSPs in its respective RWP and submit the prioritization separately with its adopted RWP. The RWPG must prioritize the WMSPs in accordance with the uniform standards, developed by the stakeholders committee established under Texas Water Code, §15.436(c), in effect at the time it adopts its RWP.

§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 (g)(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. In the instance of a recommended WMS proposed to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of the IPP, or a letter identifying the WMS in the other region along with an internet link to the IPP, to the RWPG associated with the location of such strategy.

(c) The RWPGs shall distribute the IPP in accordance with §357.21(d)(4) of this title (relating to Notice and Public Participation).

(d) Within 60 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential Interregional Conflicts by:

(1) identifying the specific recommended WMS from another RWPG's IPP;

(2) providing a statement of why the RWPG considers there to be an Interregional Conflict; and

(3) providing any other information available to the RWPG that is relevant to the Board's decision.

(e) The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve Interregional Conflicts.

(f) The RWPGs shall solicit, and consider the following comments when adopting an 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.

(4) The RWPGs shall revise their IPPs to incorporate negotiated resolutions or Board resolutions of any Interregional Conflicts into their final adopted RWPs.

(5) In the event that the Board has not resolved an Interregional Conflict sufficiently early to

allow an involved RWPG to modify and adopt its final RWP by the statutory deadline, all RWPGs involved in the conflict shall proceed with adoption of their RWP by excluding the relevant recommended WMS and all language relevant to the conflict and include language in the RWP explaining the unresolved Interregional Conflict and acknowledging that the RWPG may be required to revise or amend its RWP in accordance with a negotiated or Board resolution of an Interregional Conflict.

(g) 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 (f) 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 (f) of this section.

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

(A) IPPs 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 State Water Planning Database. All changes and corrections to this information must be entered into the Board's State Water Planning Database prior to submittal of a final adopted plan.

(C) The RWPG shall 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 shall be made available on the Board website.

(h) Upon receipt of an RWP adopted by the RWPG, the Board shall consider approval of such plan based on the following criteria:

(1) verified adoption of the RWP by the RWPG; and

(2) verified incorporation of any negotiated resolution or Board resolution of any Interregional Conflicts, or in the event that an Interregional Conflict is not yet resolved, verified exclusion of the relevant recommended WMS and all language relevant to the conflict.

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

(j) The Board shall consider approval of an RWP that includes unmet municipal Water Needs provided that the RWPG includes adequate justification, including that the RWP:

(1) documents that the RWPG considered all potentially feasible WMSs, including Drought Management WMSs and contains an explanation why additional conservation and/or Drought Management WMSs were not recommended to address the need;

(2) describes how, in the event of a repeat of the Drought of Record, the municipal WUGs associated with the unmet need shall ensure the public health, safety, and welfare in each Planning Decade that has an unmet need; and

(3) explains whether there may be occasion, prior to development of the next IPP, to amend the RWP to address all or a portion of the unmet need.

(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 an RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. An 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 shall 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, it shall provide a written explanation to the EA, after which the EA shall present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA shall 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. At the public meeting, the Board may direct the RWPG to amend its RWP based on the local Political Subdivision's request.

(b) Major Amendments to RWPs and State Water Plan. An 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. An 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 an RWPG amend its adopted RWP. An 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; and

(B) 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) An 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 increase unmet needs or produce new unmet needs in the adopted RWP;

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

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

(F) 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 an 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, an 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 WMSs in the RWP.

(e) Substitution of Alternative WMSs. 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 WMS is capable of meeting the same Water Need without over-allocating any source. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

(f) In the instance of a substitution of an Alternative WMS or a proposed amendment with a recommended WMS to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the substitution or proposed amendment to the EA, a copy of the substitution or proposed amendment to the RWPG for the location of such strategy. The provisions of sections 357.50(d), (e), (f), and (h), and 357.62, related to Interregional Conflicts, shall apply to substitution or amendment to the RWP in the same manner as those subdivisions apply to an IPP.

(g) Amending the State Water Plan. Following amendments of RWPs, including substitutions of Alternative WMSs, the Board shall make any necessary amendments to the State Water Plan as outlined in §358.4 of this title (relating to Guidelines).

§357.60. Consistency of Regional Water Plans.

(a) RWPGs shall submit to the development Board an 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 shall 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 an Existing Water Supply or water source 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; or
- (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 WMS in such plan shall 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).

§357.62. Interregional Conflicts.

(a) In the event an RWPG has asserted an interregional conflict and the Board has determined that there is a potential for a substantial adverse effect on that region, or the Board finds that an interregional conflict exists between IPPs, the EA may use the following process:

- (1) notify the affected RWPGs of the nature of the interregional conflict;
- (2) request affected RWPGs appoint a representative or representatives authorized to negotiate on behalf of the RWPG and notify the EA in writing of the appointment;
- (3) request affected RWPGs' assistance in resolving the conflict; and
- (4) 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 RWPGs 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 RWPGs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPGs 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.

§357.64. 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(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.