

# Amending an Approved Regional Water Plan

## Background

Every five years, the 16 regional water planning groups must develop and adopt regional water plans, which are then submitted to the Texas Water Development Board (TWDB) for approval. The TWDB then compiles the regional water plans into a state water plan. During the five-year span between the regular regional water plan adoptions, the plans may need to be amended to identify long-term water supplies.

## How is an amendment to a regional water plan initiated?

A regional water planning group may initiate an amendment on its own. A political subdivision of the state of Texas in the regional water planning area may also request an amendment from the regional water planning group on the basis of changed conditions or new information<sup>1</sup>.

A regional water planning group uses the following process to review amendment requests:

- The planning group must formally consider the request within 180 days of its submittal.
- The planning group may, at its discretion, accept or reject the proposed amendment.
- The political subdivision may petition the TWDB executive administrator for agency review if the political subdivision is not satisfied with the planning group's decision<sup>2</sup>.
- The executive administrator may ask the regional water planning group to make a revision.
- If the revision is not made within 90 days, the matter is presented to the TWDB, which can order a revision to the regional water plan and state water plan on the basis of changed conditions or new information.

## What are the ways that a regional water plan may be modified?

**Revisions to Population or Water Demand Projections** may be requested from the TWDB whenever current projections are no longer reasonable owing to changed conditions or the availability of new information<sup>3</sup>.

The process requires the following:

- A regional water planning group must submit a revision request, usually based on a request from a political subdivision, to the TWDB.
- The regional water planning group must provide at least 14 days notice for a meeting and make the proposed population and/or water demand projection revisions available for public inspection prior to the meeting.
- The regional water planning group must accept oral and written public comments at the meeting in which the request is considered and written comments for 14 days prior to and following the meeting.
- The regional water planning group submits the revision request to the TWDB, including a summary of all comments the planning group received at the meeting and during the 14-day comment period.
- The TWDB consults with other state agencies, and within 45 days of receipt of a revision request from a regional water planning group, the executive administrator responds to the request.
- All requested revisions will be presented for consideration of approval at an upcoming TWDB Board

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<sup>1</sup> 31 TAC §357.51 (a). Any amendment proposed must meet rules and guidelines for development of a regional water plan.

<sup>2</sup> The petition must be provided to the regional water planning group and must include the changed condition or new information that affects the approved regional water plan; the specific sections and provisions of the approved regional water plan that are affected by the changed condition or new information; the efforts made with the regional water planning group to obtain an amendment; and the proposed amendment to the approved regional water plan (31 TAC §357.51 (a)).

<sup>3</sup> 31 TAC §357.31.

meeting. Based on consultations with the Texas Department of Agriculture, Texas Commission on Environmental Quality, and Texas Parks and Wildlife Department, the TWDB staff will make a consensus recommendation to the Board.

**Substitutions** of water management strategies that have already been fully evaluated and are explicitly identified as “alternative” water management strategies in adopted regional water plans may be made if<sup>4</sup>

- the water management strategy originally recommended is no longer recommended, and
- the proposed substitution of the alternative water management strategy is capable of meeting the same water need without over-allocating any source.

The process requires the following:

- An entity requests the regional water planning group to make a substitution.
- The regional water planning group considers the substitution request as an action item on an agenda at one of its public meetings<sup>5</sup>.
- Substitution materials are submitted to the TWDB executive administrator for consideration<sup>6</sup>.
- The executive administrator approves the substitution if it is in accordance with 31 Texas Administrative Code (TAC) § 357.51 (e).
- The regional water planning group adopts the substitution at its public meeting and submits evidence of adoption to the TWDB<sup>7</sup>.

**Minor amendments** can be made to incorporate changes that do not

- result in over-allocation of an existing or planned source of water,
- relate to a new reservoir,
- increase unmet needs or produce new unmet needs in the adopted regional water plan,
- have a significant effect on instream flows, environmental flows, or freshwater flows to bays and estuaries,
- have a significant substantive impact on water planning or previously adopted management strategies, or
- delete or change any legal requirements of a plan<sup>8</sup>.

The process requires the following:

- An entity requests the regional water planning group to amend a regional water plan.
- The regional water planning group considers the request and takes action to pursue the amendment at one of its regular public meetings.
- Amendment materials are prepared in accordance with TWDB rules and guidance, and a request for a “minor amendment determination” is submitted to the TWDB’s executive administrator.
- The executive administrator reviews the request and issues a determination to the planning group.
- If the executive administrator determines that it is a “minor amendment,” the regional water planning group considers adopting the amendment at a regular public meeting with an opportunity for public input. This meeting requires at least a 14-day notice<sup>9</sup>. The regional water planning group considers public comments and may adopt the amendment at the meeting<sup>10</sup>. Comments must also be accepted for 14 days after the meeting.
- The regional water planning group submits the adopted minor amendment materials, including a summary of public comments, to the TWDB for approval.
- The TWDB reviews the adopted minor amendment and, if acceptable, approves it at its next regular

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<sup>4</sup> Per 31 TAC §357.51 (e).

<sup>5</sup> Posted under the Texas Open Meetings Act; see also 31 TAC §357.21 (c).

<sup>6</sup> 31 TAC §357.51 (e).

<sup>7</sup> Posted under the Texas Open Meetings Act.

<sup>8</sup> 31 TAC §357.51 (c).

<sup>9</sup> 31 TAC §357.51 (c) and posted under the Texas Open Meetings Act.

<sup>10</sup> Amendment adoption must include response to public comment and must otherwise comply with TWDB technical guidelines.

Board meeting.

- The TWDB then amends the state water plan, which requires a 30-day public notice for the hearing on the proposed state water plan amendment prior to its adoption.

**Major amendments** can be made to incorporate changes that cannot be addressed through a minor amendment. Major amendments shall not result in an over-allocation of an existing or planning source of water, and shall conform with all other rules for regional water plan development<sup>11</sup>.

The process requires the following:

- An entity requests the regional water planning group to make an amendment.
- The regional water planning group considers the request and takes action to pursue the amendment at one of its regular public meetings.
- Amendment materials are prepared in accordance with TWDB rules and guidance for consideration at a public hearing.
- The regional water planning group holds a public hearing on the proposed amendment<sup>12</sup>. This process requires 30 days between the mailed and published notice of the hearing and the hearing date and a 30-day comment period following the hearing.
- The regional water planning group considers all public comments received and may adopt the regional water plan amendment at a regular planning group meeting<sup>13</sup> after the 30-day comment period<sup>14</sup>.
- The regional water planning group submits the adopted amendment materials, including a summary of public comments, to the TWDB for approval<sup>15</sup>.
- The TWDB reviews the adopted amendment and considers approving the adopted regional water plan amendment.
- The TWDB then amends the state water plan, which requires a 30-day public notice for the hearing on the proposed state water plan amendment prior to its adoption.

### Who pays for an amendment?

The regional water planning group may ask the political subdivision requesting the amendment to pay for study costs related to the request. Limited TWDB funds may be available to pay for plan amendments. Unsolicited proposals requesting TWDB funding for an amendment may be submitted at any time using the standard grant application instruction sheet. Proposals must include a scope of work, task items, and expense budgets for the work to be performed. Allocation of funds requires Board approval and is variable depending on the extent of the scope of work presented with the request and the availability of funds.

### Why might a regional water plan need to be amended?

If a project sponsor seeks (a) funding from the TWDB for a water supply project or (b) a water rights permit from the Texas Commission on Environmental Quality, the proposed project must be found to be consistent with the approved regional water plan and state water plan.

If the proposed project is not already consistent with the approved regional and state water plan and the sponsor cannot wait to incorporate the proposed project into the next adopted regional water plan, the existing regional water plan must be amended, or a waiver of statutory requirements regarding consistency with such plans must be obtained from the TWDB and/or Texas Commission on Environmental Quality<sup>16</sup>.

Additionally, in order for projects to be eligible for funding from the State Water Implementation Fund for Texas,

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<sup>11</sup> 31 TAC §357.51 (b).

<sup>12</sup> 31 TAC §357.21 (d).

<sup>13</sup> Posted under the Texas Open Meetings Act; see also 31 TAC §357.21 (d).

<sup>14</sup> Amendment adoption must include response to public comment and must otherwise comply with TWDB technical guidelines.

<sup>15</sup> Amendments to an approved regional water plan shall include a technical report and data in accordance with TWDB specifications, executive summary, and summaries of all written and oral comments received with a response. Data must be transferred to the TWDB (31 TAC §357.50 (g)).

<sup>16</sup> 31 TAC §357.60 (b)(5).

projects must be recommended in the most recent regional and state water plans.

## **Statutes and Rules**

Texas Water Code, Chapter 16, Subchapter C:

<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.16.htm>

31 TAC Chapter 357:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=31&pt=10&ch=357&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=31&pt=10&ch=357&rl=Y)

For more information on regional water planning and related guidance, please visit the following Web site:

<http://www.twdb.texas.gov/waterplanning/rwp/index.asp>

### ***Note:***

*This guidance document does not cover all procedural and substantive requirements applicable to water plan amendments. For this reason, this document should not be used as a substitute for the regulations as written. In case of doubt, consult the Texas Water Code, Chapter 16, Subchapter C, and 31 TAC Chapter 357. Regional water planning groups or political subdivisions with legal questions regarding changes to the regional water plans should consult with their own attorneys or the Texas Attorney General's Office.*

*Updated 12/16*