Texas Water Development Board

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TO: Board Members

FROM: Kevin Patteson, Executive Administrator

DATE: December 17, 2014

SUBJECT: Region C Response to Interim Order of August 8, 2014

ACTION REQUESTED

Direct Region C and Region D to revise their regional water plans to reflect resolution of the interregional conflict by Region C's readoption of its current regional water plan with Marvin Nichols Reservoir as a recommended water management strategy and Region D's amendment of its current regional water plan to reflect that the conflict has been resolved.

BACKGROUND

On August 7, 2014, the Texas Water Development Board (TWDB) Board considered in an open meeting the interregional conflict between the Region C and Region D 2011 regional water plans. The Board issued an Interim Order on August 8, 2014 that requested additional information from Region C and included the following instructions:

> "Region C is directed to conduct an analysis and quantification of the impacts of the Marvin Nichols Reservoir Water Management Strategy on the agricultural and natural resources of Region D and the State, pursuant to Sections 16.051 and 16.053 of the Texas Water Code and Chapters 357 and 358 of Board rules. Region C should submit this analysis and quantification to the Board by November 3, 2014. Upon receipt of the analysis and quantification, the Executive Administrator and Region D will be given the opportunity to submit a written response to the submission, and the matter will be scheduled for Board consideration. If no submittal is received by the Board on or before November 3, 2014, this matter will set for a Board Meeting to direct the Regions to revise their regional water plans reflecting the removal of the Marvin Nichols Reservoir Water Management Strategy from the 2011 Region C Plan, without prejudice."

Our Mission

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

Board Members

Carlos Rubinstein, Chairman | Bech Bruun, Member | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator

On October 29, 2014, Region C submitted an "Analysis and Quantification of the Impacts of the Marvin Nichols Reservoir Management strategy on the Agricultural and Natural Resources of Region D and the State. On October 31, 2014, the TWDB Office of General Counsel provided instructions and a timeline for responses to and consideration of Region C's quantitative analysis.

KEY ISSUES

Staff Review of Compliance with 31 TAC § 357.34(d)(3) and the Interim Order

TWDB rules in 31 Texas Administrative Code § 357.34(d)(3) set out the elements of the quantitative reporting required by the Board in its Interim Order:

- 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; and
- Impacts to agricultural resources.

Region C's quantitative analysis discussed each of these impacts and also included discussions of impacts to threatened and endangered species and to natural and agricultural resources from mitigation. Based on the information provided, TWDB rules, and the interim order, the Executive Administrator finds that Region C has complied with the interim order and current rules.

Amendments to Regional Water Plans

Under Tex. Water Code § 16.053(h)(6), on resolution of the conflict, the involved regional water planning groups must prepare revisions to their respective plans; consider all public and Board comments; prepare, revise, and adopt their respective plans; and submit their plans to the Board for approval and inclusion in the state water plan. The Executive Administrator makes the following recommendation in accordance with those statutory instructions. Both Region C *and* Region D are regional water planning groups involved in the conflict. Therefore, both regions must reflect the Board's resolution of the conflict by amending their plans accordingly.

Section 357.51 of the TWDB rules provides the process for amending regional water plans. The procedures a regional planning group must follow vary depending on whether the amendment is a major or a minor amendment. A minor amendment is defined as an amendment that:

1. does not result in over-allocation of an existing or planned source of water;

2. does not relate to a new reservoir;
3. does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;
4. does not have a significant substantive impact on water planning or previously adopted management strategies;
5. does not delete or change any legal requirements of the plan;
6. is for a clean coal project and meets the requirements of 31 TAC 357.51(d); or
7. substitutes an alternative water management strategy for a recommended strategy under 31 TAC 357.51(e).

A major amendment is one that does not meet any of the above criteria. The regional water planning group must hold a public hearing on a major amendment and provide a public comment period of at least 30 days before and after the public hearing for a major amendment. The regional water planning group must hold a public meeting to act on a minor amendment, but is not required to hold a public hearing and the comment periods.

The Executive Administrator intends to treat the amendments of the Region C and Region D 2011 regional water plans as minor amendments to those plans. The Region C Analysis does not result in over-allocation of an existing or planned source of water. It does not relate to a new reservoir, but to one that is already in the plan. The Region C Analysis indicates that Marvin Nichols may have a significant effect on instream flows and environmental flows, but will not have a significant impact on freshwater flows to bays and estuaries; nor does it delete or change any legal requirements of the plan. Therefore, the addition of the analysis to the Region C regional water plan and the amendments to the Region D Plan as outlined in the Executive Administrator's memorandum to the Board on May 19, 2014 will follow the procedures for a minor amendment.

RECOMMENDATIONS

Based on the above, the Executive Administrator recommends that the Board resolve the conflict between Region C and Region D in the manner recommended in the Executive Administrator's memorandum to the Board on May 19, 2014 with the following modification.

In place of Recommendation 2.a, the Executive Administrator recommends that the Board:

> Instruct Region C to retain Marvin Nichols as a recommended strategy in its 2011 Water Plan; to update Chapter 7 of its Plan, relating to Plan Consistency with Long-term Protection of Resources, by incorporating the quantitative analysis into the plan; and to update Chapter 10 of its Plan, relating to the Plan Approval Process, to reflect the mediation, the TWDB interim order, the TWDB final action, and other actions taken to effect that final action.