

**TO:** Board Members

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

**FROM:** Sarah Backhouse, Manager, Regional Water Planning

**DATE:** January 30, 2020

**SUBJECT:** Proposed rulemaking relating to Regional Water Planning.

**ACTION REQUESTED**

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

**BACKGROUND**

The proposed amendments and new provisions will implement legislative changes from House Bill (HB) 807 from the 86<sup>th</sup> (R) Legislative Session and clarify rules to make them more understandable and uniformly applied. These amendments affect the state’s regional water planning process.

On July 19, 2019, a request for preliminary input was sent to regional water planning group (RWPG) stakeholders. Comments were received through August 1, 2019. The proposed amendments to 31 TAC Chapter 357 were developed with consideration given to comments received.

**KEY ISSUES**

**31 TAC Chapter 357:**

Significant proposed changes to this chapter include the following topics.

Implementation of requirements from HB 807:

1. Texas Water Development Board appointment of an Interregional Planning Council.
2. Regional water plans (RWP) to include an assessment of unnecessary or counterproductive variations in drought response strategies.
3. RWPs to include a specific assessment of aquifer storage and recovery potential if there are significant identified water needs.

4. RWPGs to set Gallons Per Capita Per Day goal(s) for each planning decade.
5. RWPGs to assess the progress of regionalization.
6. RWPG recommendations on water planning process improvements.

Clarification of existing rules:

1. Clarifying the designation of the Small Businesses and River Authority interest categories.
2. Clarifying reporting requirements for certain provisions related to major water providers.
3. Adding a specification regarding the documentation of certain recommended water management strategies (aquifer storage and recovery, seawater desalination, and brackish groundwater desalination) to align with a requirement in the contract scope of work.
4. Clarifying the requirements related to the collection of existing major water infrastructure facilities.
5. Clarifying the assessment of impacts of the RWP on unique stream segments.

**RECOMMENDATION**

The Executive Administrator recommends approval of the publication of the attached proposal that, if adopted, would add amendments and new provisions to 31 TAC Chapter 357 to clarify existing rules and implement legislative changes.

Attachment: Preamble and Proposed Amendments to 31 TAC Chapter 357.

## Attachment

The Texas Water Development Board (“TWDB” or “board”) proposes amendments to §§357.10, 357.11, 357.21, 357.31, 357.33, 357.34, 357.42, 357.43, 357.45, relating to regional water planning.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The purpose of the amendments is to implement changes from House Bill (HB) 807, 86<sup>th</sup> (R) Legislative Session, and to clarify rules to make them more understandable and uniformly applied by regional water planning groups (RWPGs). The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

#### *Subchapter A. General Information.*

##### *Section 357.10. Definitions and Acronyms.*

The definition of Regional Water Planning Gallons Per Capita Per Day is added to clarify the term as used in regional water planning. This definition aligns with the Texas Water Development Board and Texas Commission on Environmental Quality guidance document *Guidance and Methodology for Reporting on Water Conservation and Water Use*.

The remaining sections in §357.10 are renumbered to accommodate the addition of §357.10(25).

##### *Section 357.11. Designations.*

Section 357.11(d)(7) is revised to expand the eligible participation of the small businesses interest category. The updated ranges are based on information collected by the U.S. Small Business Administration.

Section 357.11(d)(9) is revised to remove Palo Duro River Authority from the required river authority interest category. The authority of the Palo Duro River Authority was revised by HB 1920 during the 85<sup>th</sup> Legislative Session by the reclassification of the river authority to a local water district.

New section 357.11(k) is added to implement a change to Texas Water Code (TWC) §16.052 made by HB 807, 86<sup>th</sup> Legislative Session (relating to an Interregional Planning Council). The change requires that the Board appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council is to be considered a Governmental Body in accordance with Texas Government Code §551.001 and must conduct business in accordance with the Texas Open Meetings Act. The Interregional Planning Council is also considered a Governmental Body under Texas Government Code §552.003 and must follow the Texas Public Information Act.

Due to the timing of the current planning cycle, the deliverable date for the Council’s report is proposed to coincide with the deliverable date of the adopted 2021 regional water plans (RWP).

For state water plan cycles beginning with the 2027 State Water Plan, a deliverable date for the Council's report is proposed to occur in advance of the Initially Prepared Plans to allow for consideration of recommendations by the RWPGs during development of their plans. In future planning cycles, each RWPG will be required to submit an alternate along with their nomination(s). Alternates may assume all responsibilities of the appointed Council member, should the Council member not be able to serve during their term, without additional Board action.

*Subchapter B. Guidance Principles and Notice Requirements.*

*Section 357.21. Notice and Public Participation.*

Section 357.21(a) is revised to specify that the collection of certain information related to existing major water infrastructure facilities is exempted from the Public Information Act, Texas Government Code, Chapter 552.

*Subchapter C. Planning Activities For Needs Analysis And Strategy Recommendations.*

*Section 357.31. Projected Population and Water Demands.*

Section 357.31(f) is revised to clarify that Population and Water Demand projections shall be presented for each Planning Decade for Water User Groups (WUG) and that Water Demand projections associated with Major Water Providers will be presented for each Planning Decade by category of water use.

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

Section 357.33(d) is revised to clarify that the reporting requirements for the social and economic impacts of not meeting Water Needs are only required for WUGs.

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

Section 357.34(e)(3)(A) is revised to correct a typographical error.

Section 357.34(g) is added to specify the RWPGs must document in their RWP why certain water management strategies were not recommended, a task that is already required of RWPGs by the contract scopes of work. These strategies include aquifer storage and recovery, seawater desalination, and brackish groundwater desalination.

Section 357.34(h) is added to implement a change to TWC §16.053(e)(10) made by HB 807 (relating to Aquifer Storage and Recovery). The change requires that RWPGs assess the potential for aquifer storage and recovery to meet significant water needs in the planning area, as identified by the RWPG.

Previous sections (g) and (h) are renumbered to (i) and (j), respectively.

Section 357.34(i)(3) is added to implement a change to TWC §16.053(e)(11) made by HB 807 (relating to Gallons Per Capita Per Day Goals). The change requires that RWPGs set specific gallons per capita per day goals for municipal WUGs in the planning region. The use of a

drought water use condition (rather than an average water use condition) is proposed to align with the drought condition requirements under which RWPs are developed.

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

*Section 357.42. Drought Response Information, Activities, and Recommendations.*

Section 357.42(b) is revised to clarify language of drought assessments.

A new section 357.42(b)(1) is added to clarify considerations drought assessments should include.

A new section 357.42(b)(2) is added to implement a change to TWC §16.053(e)(3)(E) made by HB 807 (relating to Drought Response Strategies). The change requires that RWPGs identify unnecessary or counterproductive variations in drought response strategies in the planning region that may confuse the public or impede drought response efforts.

Section 357.42(d) is revised to remove the requirement that the collection of information related to existing major water infrastructure facilities be collected in a closed meeting, to comply with Texas Open Meeting Act requirements and to clarify the minimum content required to be presented in the RWPs.

*Section 357.43. Regulatory, Administrative, or Legislative Recommendations.*

Section 357.43(b)(2) is revised to clarify that the RWPG shall assess the impact of the RWP on unique stream segments that have been designated 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, by any previous legislative session, or recommended as a unique river or stream segment in the RWP.

Section 357.43(d) is revised to implement a change to TWC §16.053(i) made by HB 807 (relating to Recommendations to Improve the Water Planning Process). The change specifies that RWPs may include recommendations the RWPG believes would improve the planning process.

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

Section 357.45(b) is added to implement a change to TWC §16.053(e)(12) made by HB 807 (relating to Regionalization). The change requires that the RWPGs assess the progress of regionalization in the planning area.

Previous section 357.34(b) is renumbered to (c).

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS**

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There may be a change in costs for RWPGs, which are funded by the TWDB. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. The legislation that this rulemaking seeks to implement did impose additional requirements on the RWPGs. The cost for funding the regional water planning process is provided by the TWDB. These rules do not impose any additional requirements that are not imposed by statute.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are necessary to protect water resources of this state as authorized by the Water Code and are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it implements legislation to improve the state water planning process.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed 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 and provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the proposed 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 any 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 proposed solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, this proposed 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 proposed 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 and clarify existing rules to make them more understandable. The proposed rule would substantially advance this stated purpose by adding language related to legislative changes and clarifying existing language related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed 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 proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed 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 state water planning process. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

## GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

The legislation implemented through this rulemaking may necessitate an increase in future legislative appropriations to the agency to provide funds to the RWPGs to include additional information in the RWPs. The agency received feedback from RWPG stakeholders following the 86<sup>th</sup> Legislative Session regarding the potential need for additional funding to address the new requirements.

## SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include reference to Chapter 357 in the subject line of any comments submitted.

## STATUTORY AUTHORITY

This rulemaking is proposed under the authority of TWC §§16.052 and 16.053.

Chapter 16 of the TWC is affected by this rulemaking.

## CHAPTER 357. REGIONAL WATER PLANNING

### SUBCHAPTER A. GENERAL INFORMATION.

#### §357.10. Definitions and Acronyms.

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

(1) 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 paragraph (42)(A) - (D) of this section.
- (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 Gallons Per Capita Per Day-- For Regional Water Planning purposes, Gallons Per Capita Per Day is the annual volume of water pumped, diverted, or purchased minus the volume exported (sold) to other water systems or large industrial facilities divided by 365 and divided by the permanent resident population of the Municipal Water User Group in the regional water planning process. Coastal saline and reused/recycled water is not included in this volume.

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

(27) [(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.

(28) [(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."

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

(30) [(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).

(31) [(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).

(32) [(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).

(33) [(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.

(34) [(33)] Technical Memorandum--Documentation of the RWPG's preliminary analysis of Water Demand projections, water Availability, Existing Water Supplies, and Water Needs and declaration of the RWPG's intent of whether or not to pursue simplified planning.

(35) [~~(34)~~] Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(36) [~~(35)~~] 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.

(37) [~~(36)~~] 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.

(38) [~~(37)~~] Water Conservation Strategy--A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

(39) [~~(38)~~] 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.

(40) [~~(39)~~] 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.

(41) [~~(40)~~] 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.

(42) [~~(41)~~] Water Need--A potential water supply shortage based on the difference between projected Water Demands and Existing Water Supplies.

(43) [~~(42)~~] 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 subparagraphs (A) and (B) of this paragraph 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 subparagraphs (A) - (D) of this paragraph; 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.

(44) ~~[(43)]~~ 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 RWPA's 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 RWPA's 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 RWPA's 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 RWPA's 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 RWPA's 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 RWPA's;
- (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 500 [~~100~~] employees or less than \$10 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;

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

(6) Staff member of the State Soil and Water Conservation Board designated by its executive director.

(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.

(k) The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following provisions:

(1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.

(2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.

(3) Interregional Planning Council members will serve until adoption of the State Water Plan.

(4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.

(5) For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by the 2021 adopted RWP deliverable date as set in regional water planning contracts. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than six (6) months prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

## SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS.

### §357.21. Notice and Public Participation.



(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made 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. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(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; population projection and Water Demand projection revision requests to the EA regarding draft projections; process of identifying potentially feasible WMSs for plans previous to the 2026 RWPs; meetings to replace RWPG members or addition of new RWPG members; submittal of request to EA for approval of an Alternative WMS substitution; declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning; adoption of RWPs; and RWPG committee and subcommittee meetings.

(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; approval to submit Technical Memorandum; substitution of Alternative WMSs; process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs for plans beginning with the 2026 plan; and minor amendments to RWPs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet and emailed or 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;

(C) each RWPG where a recommended or Alternative WMS being considered would be located; and

(D) for actions associated with infeasible WMSs or WMSPs, each project sponsor of a WMS or WMSP identified as infeasible.

(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; public hearings on declarations to pursue simplified planning, 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 (9)(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;

(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;

(G) for declarations of intent to pursue simplified planning, RWPGs with water supply sources, WMSs, or WMSPs shared with the RWPG declaring intent to pursue simplified planning; and

(H) for amendments associated with infeasible WMSs or WMSPs, each project sponsor of a WMS or WMSP identified as infeasible.

(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) 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.

(8) The public hearing for the IPP shall be conducted at a central location readily accessible to the public within the regional water planning area.

(9) 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 or declaration of intent to pursue simplified planning.

(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 declaring implementation of simplified planning, 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.

#### SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS.

##### §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 in accordance with subsection (a) of this section and MWP in accordance with subsection (b) of this section [~~WUGs and MWPs~~].

§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 MWPs 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 in 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) If an RWPG does not recommend aquifer storage and recovery strategies, seawater desalination strategies, or brackish groundwater desalination strategies it must document the reason(s) in the RWP.

(h) In instances where an RWPG has determined there are significant identified Water Needs in the RWPA, the RWP shall include an assessment of the potential for aquifer storage and recovery to meet those Water Needs. Each RWPG shall define the threshold to determine whether it has significant identified Water Needs. Each RWP shall include, at a minimum, a description of the methodology used to determine the threshold of significant needs. If a specific assessment is conducted, the assessment may be based on information from existing studies and shall include minimum parameters as defined in contract guidance.

~~(i)~~(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 WWPs 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).

(3) RWPGs shall recommend Gallons Per Capita Per Day goal(s) for each municipal WUG or specified groupings of municipal WUGs. Goals must be recommended for each planning decade and may be a specific goal or a range of values. At a minimum, the RWPGs shall include Gallons Per Capita Per Day goals based on drought conditions to align with guidance principles in §358.3 of this title (relating to Guidance Principles).

(j) ~~(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.

#### SUBCHAPTER D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION.

##### §357.42. Drought Response Information, Activities, and Recommendations.

(a) RWPGs 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. The assessment shall include:

(1) A description of how water suppliers in the RWPA identify and respond to the onset of drought; and

(2) Identification of unnecessary or counterproductive variations in drought response strategies among water suppliers that may confuse the public or impede drought response efforts. At a minimum, RWPGs shall review and summarize drought response efforts for neighboring communities including the differences in the implementation of outdoor watering restrictions.

(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. At a minimum, the RWP shall include a general description of the methodology used to collect the information, the number of existing and potential emergency interconnects in the RWPA, and a list of which entities are connected to each other. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. ~~[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]~~ Any excepted information collected shall be 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 RWPGs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWPGs 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, including 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. This may include recommendations that the RWPG believes would improve the state and regional water planning process.

(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.

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

(a) RWPGs shall describe the level of implementation of previously recommended WMSs and associated impediments to implementation in accordance with guidance provided by the board. 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 assess the progress of the RWPA in encouraging cooperation between WUGs for the purpose of achieving economies of scale and otherwise incentivizing WMSs that benefit the entire RWPA. This assessment of regionalization shall include:

(1) The number of recommended WMSs in the previously adopted and current RWPs that serve more than one WUG;

(2) The number of implemented WMSs since the previously adopted RWP that serve more than one WUG; and

(3) A description of efforts the RWPG has made to encourage WMSs and WMSPs that serve more than one WUG, and that benefit the entire region.

(c)[(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.