

AGENDA ITEM MEMO

BOARD MEETING DATE: April 11, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Matt Nelson, Deputy Executive Administrator, Office of Planning

FROM: Sarah Backhouse, Manager, Regional Water Planning

SUBJECT: Amendments to regional and state water planning rules

ACTION REQUESTED

Consider adopting amendments to 31 Texas Administrative Code (TAC) Chapter 357 relating to Regional Water Planning and 31 TAC Chapter 358 relating to State Water Planning Guidelines.

BACKGROUND

The Texas Water Development Board (TWDB) authorized publication of proposed amendments to 31 TAC Chapter 357 and 358 on December 16, 2021. The proposed amendments were published in the *Texas Register* on December 31, 2021 with a deadline to receive public comments by January 31, 2022.

The TWDB received comments from Senator Charles Perry, the Central Texas Water Coalition, Freese and Nichols, Inc., National Wildlife Federation, Sierra Club Lone Star Chapter, and Texas 2036 on the proposed amendments to Chapter 357. Comments were also received on the proposed amendments to Chapter 358 from the Central Texas Water Coalition, City of Austin, Freese and Nichols, Inc., National Wildlife Federation, Sierra Club Lone Star Chapter, and Texas 2036.

By statute, the TWDB is required to respond to timely submitted comments and, if considered by the Executive Administrator as warranted, modify the proposed rules. As a result of public comments, the Executive Administrator has determined that two rule revisions that had been originally included in the rule proposal for Chapter 357 should not

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

be adopted and are no longer included in these rules. No changes were warranted to Chapter 358 as a result of public comments.

KEY ISSUES

The purpose of the amendments to 31 TAC §357 is to reduce certain unessential reporting requirements; address stakeholder concerns; clarify rule language; and implement legislative changes from House Bill (HB) 1905, 87th Legislative Session.

The purpose of the amendments to 31 TAC §358 is to address concerns raised by regional water planning group stakeholders and the Interregional Planning Council to clarify that regional water planning groups may plan for drought conditions worse than the drought of record, and to clarify rule language.

Please note that as a result of comments received as part of this rulemaking, proposed changes to §357.34(j) and §357.42(j) will not be implemented and will, therefore, remain as they were prior to this rulemaking.

The comments received and the TWDB's responses are summarized in attachments to this memo as part of the rule adoption package.

RECOMMENDATION

The Executive Administrator recommends approval of this item in order to implement legislative changes from HB 1905, 87th Legislative Session, reduce certain nonstatutory reporting requirements, address certain stakeholder concerns, and clarify existing rules.

Attachments:

- A. Adoption of rule amendments for publication in the Texas Register - Chapter 357.
- B. Adoption of rule amendments for publication in the Texas Register - Chapter 358.

31 TAC Ch 357 Adopted Amendments

The Texas Water Development Board ("TWDB" or "board") adopts an amendment to 31 Administrative Code (TAC) §§357.10 - 357.12, concerning General Information; §357.21, §357.22, concerning Guidance Principles and Notice Requirements; §§357.31 - 357.34, concerning Planning Activities for Needs Analysis and Strategy Recommendations; §§357.42 - 357.46, concerning Impacts, Drought Response, Policy Recommendations, and Implementation; §357.50, §357.51, concerning Adoption, Submittal, and Amendments to Regional Water Plans; and §357.62 in Subchapter F, concerning Consistency and Conflicts In Regional Water Plans. The proposal is adopted with changes as published in the December 31, 2021, issue of the Texas Register (46 TexReg 9194).

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

The purpose of the amendments to 31 TAC §357 is to reduce certain unessential reporting requirements; address stakeholder concerns raised during the previous planning cycle and preliminary input period; and clarify rule language by removing outdated references to past planning cycles and revising references to updated public notice rules in Section §357.21. The purpose of the adopted repeals to 31 TAC §357.44 and §357.46 is to implement legislative changes from House Bill (HB) 1905, 87th Legislative Session.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter A. General Information.

Section §357.10. Definitions and Acronyms.

Section §357.10(18) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.10(43)(F) is revised to clarify the livestock water user group terminology.

Section §357.11. Designations.

Section §357.11(k)(5) is revised to remove a reference to past planning cycles.

Section §357.12. General Regional Water Planning Group Responsibilities and Procedures.

Section §357.12(a)(1) is revised to add a new requirement for regional water planning groups (RWPGs) to discuss their process for conducting interregional coordination at the pre-planning public input meeting.

Section §357.12(b) is revised to reference the appropriate public notice rule in Section §357.21 and add clarity to the rule.

Section §357.12(c) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.12(c)(7) is revised to remove an outdated reference and clarify that if the RWPG does not determine that any water management strategies (WMSs) or water management strategy projects (WMSPs) are infeasible in their previously adopted regional water plan

(RWP), the Technical Memorandum shall include a statement that no infeasible WMSs or WMSPs were identified by the RWPG.

New section §357.12(c)(8) is added to require that the Technical Memorandum include a summary of the RWPG's interregional coordination efforts to date regarding plan development efforts. Interregional coordination efforts may include but are not limited to, the region's use of regional liaisons, forming committees to meet with neighboring regions or their representatives, and authorizing RWPG administrators or planning group consultants to meet with neighboring regions or their representatives.

Previous section §357.12(c)(8) is renumbered to §357.12(c)(9).

Section §357.12(d) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.12(g) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.12(h) is revised to reference the appropriate public notice rule in Section §357.21.

Subchapter B. Guidance Principles and Notice Requirements.

Section §357.21. Notice and Public Participation.

New section §357.21(g)(1)(I) is added to specify that adoption of errata to RWPs is subject to a minimum seven-day public notice period. The rule also specifies the minimum time for posting meeting materials as three days prior to and seven days following the public meeting.

Previous sections §357.21(g)(1)(I) and (J) are renumbered to (J) and (K), respectively.

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

Section §357.22(b) is revised to remove a reference to §357.44 and revise the total number of RWP chapters to 10. Section §357.44 is removed to implement the repeal of Texas Water Code (TWC) §15.435(g)(2) and §16.053(q) made by HB 1905, 87th Legislative Session (relating to Infrastructure Financing Surveys).

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

Section §357.31. Projected Population and Water Demands.

Section §357.31(e)(2) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.32. Water Supply Analysis.

Section §357.32(a)(2) is revised to provide clarity to the rule.

Section §357.32(c)(1) is revised to provide reference to the definition of Firm Yield in Section §357.10 in order to clarify that evaluations of existing stored water available during Drought of Record conditions are to use anticipated sedimentation rates and assume that all senior water rights will be totally utilized, and all applicable permit conditions are met.

Section §357.32(e) is removed since it is duplicative of §357.32(a)(2).

Previous sections (f) and (g) are renumbered to (e) and (f), respectively.

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

Section §357.33(b) is revised to remove the description of how results shall be reported for WUGs and MWPs. Reporting requirements for WUGs and MWPs are clarified and consolidated in new §357.33(c).

Previous section §357.33(c) is removed because it is duplicative of §357.40(a).

Previous sections (d) and (e) are renumbered to (c) and (d), respectively.

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

Section §357.34(b) is revised to clarify rule language.

Section §357.34(d) is revised to remove the reference to RWPG project prioritization. The requirement for RWPGs to prioritize projects is removed by HB 1905, 87th Legislative Session.

Section §357.34(e)(3)(A) is revised to provide specific allowances for costs associated with distribution of water within a water user group after treatment for direct reuse and conservation WMSs. These specific, limited allowances will be detailed in the regional water planning grant contract technical guidance (Contract Exhibit C).

Section §357.34(e)(9) is removed because it is duplicative of §357.34(i)(2)(D), which requires RWPGs to consider information from water loss audits in their development of WMSs.

Section §357.34(e)(10) is renumbered to (9).

Section §357.34(j) will not change as a result of this rulemaking.

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

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

Section §357.42(c) is revised to align the rule more closely with statute, TWC §16.053(e)(3)(B)-(C), which requires RWPGs to identify factors specific to each source of water supply to be considered in determining whether to initiate a drought response and actions to be taken as part of the response;

Section §357.42(e) is revised to substitute the word “may” for the word “shall” to align the rule more closely with statute and remove nonstatutorily required reporting.

Section §357.42(i) is revised to substitute the word “may” for the word “shall” to align the rule more closely with statute and remove non-statutorily required reporting.

Section §357.42(j) will not change as a result of this rulemaking.

Section §357.44. Infrastructure Financing Analysis.

Section §357.44 is removed to implement the repeal of TWC §16.053(q) and the amendment of TWC §15.435(g) made by HB 1905, 87th Legislative Session (relating to Infrastructure Financing Surveys). The revision removes the requirement for RWPGs to perform an infrastructure financing analysis.

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

Section §357.46 is removed to implement the repeal of TWC §15.436 made by HB 1905, 87th Legislative Session (related to Prioritization of Project by RWPGs). The revision removes the requirement for RWPGs to prioritize recommended WMSPs and removes the requirement for RWPGs to submit the prioritization with an adopted RWP.

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

Section §357.50(c) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.50(f)(2) refers to outdated written comment requirements and is removed. The written comment period requirements for the IPP are outlined in §357.21(h)(3).

Previous sections §357.50(f)(3), (4), and (5) renumbered to (2), (3), and (4), respectively.

Renumbered section §357.50(f)(2) is revised to clarify rule language and reference the appropriate public notice rule in Section §357.21.

New section §357.50(g)(1)(C) is added to require documentation of the RWPG's interregional coordination efforts regarding plan development efforts in the Initially Prepared Plan (IPP) and adopted RWPs. Interregional coordination efforts may include but are not limited to, the region's use of regional liaisons, forming committees to meet with neighboring regions or their representatives, and authorizing RWPG administrators or planning group consultants to meet with neighboring regions or their representatives.

Previous section §357.50(g)(1)(C) is renumbered to (D) and revised to specify that a copy of the EA's comments on the IPP be included in the RWP.

Section §357.50(g)(2)(B) is revised to clarify rule language on data requirements.

Section §357.51. Amendments to Regional Water Plans.

Section §357.51(b) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.51(b)(2) is revised to clarify rule language and reference the appropriate public notice rule in Section §357.21.

Section §357.51(b)(4) is revised to clarify rule language and reference the appropriate public notice rule in Section §357.21.

Section §357.51(c)(2)(C) is revised to allow minor RWP amendments that remove infeasible recommended WMSs or WMSPs (in accordance with §357.51(g) and Texas Water Code §16.053(h)(10)) to include an increase in or new unmet needs. This change is made in an effort to provide an efficient process, with minimum administrative burden, for the removal of infeasible WMSs or WMSPs.

Section §357.51(c)(4) is revised to specify that an adopted minor amendment to a RWP shall include responses to comments received on the amendment. The rule is also revised to reference the appropriate public notice rule in Section §357.21.

Section §357.51(e) is revised to reference the appropriate public notice rule in Section §357.21.

Section §357.51(g) is revised to specify that RWP amendments for infeasible recommended WMSs or WMSPs shall be submitted to the Board by a date established by the EA and to require that these amendments detail any changes to unmet needs.

New section §357.51(i) is added to allow RWPGs to adopt an errata to a final RWP to correct minor, non-substantive errors identified after adoption of the final RWP but prior to adoption of the corresponding State Water Plan. Examples of minor, non-substantive errors that may be addressed in errata include corrections to typos or revisions to address inconsistencies between the RWP and the State Water Planning Database such as incorrect capital costs, online decades for WMSPs, incorrect WMSP components, or incorrect water user group and WMSP relationships. Prior to adopting errata to a final RWP, the RWPG must provide a minimum seven-day public notice in accordance with §357.21(g)(1). Once adopted, the RWPG shall submit errata containing revised pages to the final RWP and public comments received to the EA for review.

Section §357.62. Interregional Conflicts.

Section §357.62(b)(2) is revised to reference the appropriate public notice rule in Section §357.21.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the 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 reduce non-statutory reporting requirements, implement statutory changes, and clarify rule language.

Even if the 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 the standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under the authority of Texas Water Code §15.439 and §16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to reduce non-statutory reporting requirements, implement statutory changes, and clarify rule language.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

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

PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC), Freese and Nichols, Inc. (FNI), National Wildlife Federation (NWF), Sierra Club Lone Star Chapter, Texas 2036, and Senator Charles Perry.

Comment

Senator Charles Perry commented that feasibility of water management strategies must be at the front of all planning discussions and noted that the proposed rule changes outline ways to streamline water planning with no plan updates for a region or an easier amendment process. Senator Perry encouraged that planning groups take a close look at project feasibility when updating the regional water plans and stated that planning groups should address supply chain issues or other mitigating factors that would cause a project to not be completed in an appropriate timeframe through the proposed amendment process. Senator Perry encouraged TWDB to incorporate obtainable recommendations for regional water planning groups to meet

expectations that regional water plans be realistic and include actionable items to meet the objective of water for the next 50 years.

Response

The TWDB appreciates this comment. No change has been made in response to this comment.

Comment

Sierra Club Lone Star Chapter and NWF commented that the proposed amendments did not include several clarifications for which TWDB requested preliminary input from stakeholders, including consideration of available reuse data and reuse capacity constraints, and the implementation status of drought contingency measures. Sierra Club Lone Star Chapter and NWF commented that they supported these clarifications in their June 30, 2021, preliminary input letter and continue to believe that the clarifications are reasonable.

Response

The TWDB appreciates this comment. The TWDB notes that this comment is not in response to any specific proposed rule change, but rather the comment relates to preliminary stakeholder input. The TWDB has reviewed the preliminary input and will take it under advisement when updates to regional water planning guidance documents are made. No change has been made in response to this comment.

Comment

Texas 2036 provided comprehensive comments related to the creation of a water market. Texas 2036 commented that a definition for the term water market should be added to §357.10 and provided a suggested definition for the term. Additionally, Texas 2036 commented that §357.22 (relating to General Considerations for Development of Regional Water Plans) should be expanded to include the consideration of information on the effects of water markets functioning within the planning region.

Texas 2036 commented that §357.34(c)(1) should be amended to distinguish water markets from water marketing and proposed that “water marketing” in the existing rule language be revised to “water markets”.

Texas 2036 commented that §357.34(e) should be amended to require that planning group evaluations of potentially feasible water management strategies include an analysis of the effects of water markets within the region

Response

The TWDB appreciates this comment, but the creation of a water market is outside the scope of this rulemaking and well beyond its statutory authority. The TWDB takes no position of the merits of a water market. No changes have been made in response to these comments.

Comment

Texas 2036 commented that §357.22 (relating to General Considerations for Development of Regional Water Plans) should be expanded to include the consideration of extreme weather data and trends made available by the Office of the State Climatologists at Texas A&M University.

Response

The TWDB appreciates this comment, but it is outside the scope of this rulemaking. The TWDB notes that this comment is not in response to any specific proposed rule change. No change has been made in response to this comment.

Comment

Texas 2036 commented that the definition of firm yield included in §357.10(14) should be amended to include evaporative losses since both sedimentation and evaporation affect a reservoir's firm yield. Texas 2036 commented that the proposed change would ensure that the firm yield data that informs regional water supply analysis include evaporative losses. Texas 2036 commented that the proposed rule change to §357.32(c)(1) to reference the definition of firm yield in §357.10(14) also makes their proposed change to the firm yield definition more necessary.

Response

The TWDB appreciates this comment. Evaporative losses are already accounted for in firm yield calculations through the standard default criteria in the Texas Commission on Environmental Quality Water Availability Models. Planning groups have the flexibility to incorporate projected increases of evaporative losses into modeling of surface water reservoirs through the agency's hydrologic variance request process. No change has been made in response to this comment.

Comment

CTWC commented that it has concerns that regional water planning groups may overestimate water available in storage reservoirs by overlooking some components of water use permits that govern operations of those reservoirs. CTWC asked for confirmation that the full amount of reservoir releases, including interruptible irrigation supplies required or authorized under a reservoir's water management plan, must be assumed when determining a reservoir's firm yield, as defined by §357.10(14).

Response

The TWDB appreciates this comment, but it is outside the scope of this rulemaking. The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comment requests the clarification of an existing rule. RWPGs are required to evaluate reservoir firm yield to determine supplies during drought of record conditions and must account for water use permit requirements and special conditions. The TWDB encourages CTWC to continue to engage with Region K during the 2026 regional water planning process. No change has been made in response to this comment.

Comment

CTWC commented that regional water planning groups would benefit from additional TWDB guidance on procedural matters and asked if TWDB's assistance to the regional water planning groups may include the presence of a TWDB-provided parliamentarian at planning group meetings as well as regulatory review of regional water planning group bylaws and their interpretation and enforcement.

Response

The TWDB appreciates this comment. The TWDB staff strives to provide clear and adequate guidance and support to the RWPGs within its available resources. The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comment requests additional assistance from the TWDB. No change has been made in response to this comment.

Comment

FNI commented that it appreciates the efforts of the Interregional Planning Council and supports the proposed rule amendments regarding documentation of interregional coordination. FNI commented that the amendments promote improved documentation while allowing the planning groups the flexibility to develop their own coordination procedures.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Comment

FNI commented that legislative requirements for regional water planning groups to identify infeasible water management strategies present substantial challenges. FNI commented that it appreciates the integration of flexibility into Chapter 357 rules to accommodate this process, specifically clarifying the ability of planning groups to note when no strategies are deemed infeasible and the ability to accommodate additional unmet needs caused by the removal of an infeasible strategy or project.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Comment

FNI commented that it appreciates the proposed changes regarding allowances to permit planning groups to adopt errata with minor corrections to regional water plans prior to adoption of the corresponding state water plan. FNI commented that this rule amendment allows for greater efficiency to address minor errors while maintaining transparency and public participation.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Regarding

Section 357.32 Water Supply Analysis.

Comment

CTWC commented that it supports the proposed addition to §357.32(c)(1) clarifying that firm yield referenced in the rule is defined in §357.10(14).

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Regarding

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

Comment

FNI commented that it supports the proposed changes regarding allowances for costs associated with distribution of water within a water user group after treatment for direct reuse and conservation WMSs.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Comment

Sierra Club Lone Star Chapter and NWF commented that the reasoning for making the inclusion of model water conservation plans in the regional water plan optional in the revision to §357.34(j) isn't warranted and the requirement should not be made optional. Sierra Club Lone Star Chapter and NWF commented that inclusion of model water conservation plans enables the public to better evaluate water conservation recommendations in the regional water plan.

Response

The TWDB appreciates this comment. The TWDB has considered this comment and will continue to require regional water plans to include model water conservation plans. TWDB's regional water planning contract guidance, however, will clarify that regional water planning groups may use model water conservation plans developed by the Texas Commission on Environmental Quality for this purpose. As a result of this comment, the proposed change to

§357.34(j) will not be implemented and this rule will, therefore, remain as it was prior to this rulemaking.

Regarding

Section 357.42 Drought Response Information, Activities, and Recommendations.

Comment

FNI commented that it supports the proposed changes to §357.42(c) which clarifies that planning groups identify existing drought response triggers and actions rather than develop these parameters. FNI commented that the revised language removes a potential conflict between planning group responsibilities and local planning and allows the regional water plans to better reflect local planning efforts.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Comment

Sierra Club Lone Star Chapter and NWF commented that the reasoning for making it optional for planning groups to provide general descriptions of local Drought Contingency Plans that involve making emergency connections between water systems or wholesale water provider systems isn't warranted in the revision to §357.42(e). Sierra Club Lone Star Chapter and NWF commented that this information seems useful to the public.

Response

The TWDB appreciates this comment. Regional water planning groups are required to collect and report information on existing and potential emergency interconnects. These existing and potential emergency connections must be provided in the regional water plan in list form. No changes have been made in response to this comment.

Comment

Sierra Club Lone Star Chapter and NWF commented that they disagree with the proposed revision to §357.42(j) regarding development of region-specific model Drought Contingency Plans. Sierra Club Lone Star Chapter and NWF commented that municipal water user groups benefit from having region-specific model plans and that model Drought Contingency Plans developed by TCEQ do not necessarily serve each region well, given the diversity of the state.

Response

The TWDB appreciates this comment. The TWDB has considered this comment and will continue to require regional water plans to include model drought contingency plans. TWDB's regional water planning contract guidance, however, will clarify that regional water planning groups may use model drought contingency plans developed by the Texas Commission on Environmental Quality for this purpose. As a result of this comment, the proposed change to

§357.42(j) will not be implemented and this rule will, therefore, remain as it was prior to this rulemaking.

Regarding

Section 357.44 Infrastructure Financing Analysis.

Comment

FNI commented that it supports the proposed changes regarding removal of infrastructure finance analysis requirements. FNI commented that these changes reduce redundancy while maintaining plan functionality.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Regarding

Section 357.46 Prioritization of Projects by Regional Water Planning Groups.

Comment

FNI commented that it supports the proposed changes regarding removal of project prioritization requirements. FNI commented that the removal of this responsibility from the planning groups is a reasonable and timely modification to the planning process.

Response

The TWDB appreciates this comment. No changes have been made in response to this comment.

Regarding

Section 357.51 Amendments to Regional Water Plans.

Comment

Texas 2036 commented that the proposed amendments to §357.51(b)(2) to reduce the window major regional water plan amendments are available for public review should be kept intact to ensure that the major amendment publication window corresponds with the public comment window described in §357.21(g)(3).

Response

The TWDB appreciates this comment. The public notice revisions proposed in §357.51(b)(2) are to correct an error and align the section the public notice requirements in Section §357.21. No change has been made in response to this comment.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

<rule>

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

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

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

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

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

(43) 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 for each county or portion of a county in an RWPA.

(44) 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 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;

(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) The Council's report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

§357.12 General Regional Water Planning Group Responsibilities and Procedures

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

(1) hold at least one public meeting at a central location readily accessible to the public within the regional water planning area to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan and to discuss the region's process for conducting interregional coordination;

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

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

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

(b) In accordance with the requirements of §357.21(g)(2) of this title, an RWPG shall hold a public meeting to determine the process for identifying potentially feasible WMSs; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible WMSs that are potentially feasible for meeting a Water Need in the region. The public meeting shall also include a presentation of the results of the analysis of infeasible WMSs or WMSPs, as defined by Texas Water Code §16.053(h)(10), included in the most recently adopted RWP. Infeasible WMSs or WMSPs shall be identified based on project sponsor provided information or local knowledge, as acquired through plan development activities such as surveys, and as determined based on implementation schedules consistent with implementation by the project sponsors. The group shall provide notice to all associated project sponsors and amend its adopted RWP as appropriate based upon the analysis.

(c) The RWPGs shall approve and submit a Technical Memorandum to the EA after notice pursuant to §357.21(g)(2) of this title. The Technical Memorandum shall include:

(1) The most recent population and Water Demand projections adopted by the Board;

(2) Updated source water Availability utilized in the RWPA, as entered into the State Water Planning Database;

(3) Updated Existing Water Supplies, as entered into the State Water Planning Database;

(4) Identified Water Needs and surpluses;

(5) The documented process used by the RWPG to identify potentially feasible WMSs;

(6) The potentially feasible WMSs identified as of the date of submittal of the Technical Memorandum to the EA, if any;

(7) A listing of the infeasible WMSs and WMSPs, as determined by the RWPG pursuant to TWC §16.053(h)(10) and subsection (b) of this section, or a statement that no infeasible WMSs or WMSPs were identified by the RWPG;

(8) A summary of the RWPG's interregional coordination efforts to date; and

(9) During each off-census RWP development, the RWPG's declaration of intent to pursue simplified planning for that planning cycle. If the RWPG intends to pursue simplified planning, the RWPG shall document the process to authorize and initiate subsection (g) of this section.

(d) The EA shall evaluate the Technical Memorandum and any declaration of intent to pursue simplified planning, if applicable, and issue written approval prior to implementation of simplified planning by the RWPG. If an RWPG has not declared to pursue simplified planning in their Technical Memorandum, they may proceed without any additional approvals to develop their IPP. If the RWPG chooses to rescind their decision to pursue simplified planning, they must do so prior to executing a contract scope of work and budget amendment with the TWDB. The RWPG must discuss and act on the decision at a public meeting posted under notice requirements of §357.21(g)(1) of this title.

(e) If applicable, and approved by the EA, an RWPG may implement simplified planning in off-census planning cycles in accordance with guidance to be provided by the EA. An RWPG may only pursue simplified planning if:

(1) the RWPG determines in its analysis of Water Needs that it has sufficient Existing Water Supplies in the RWPA to meet all Water Needs for the 50-year planning period while identifying Existing Water Supplies that are available for voluntary redistribution in the RWPA or to other RWPA's; or

(2) an RWPG determines, including based on its analysis of source water Availability, that there are no significant changes, as determined by the RWPG, to water Availability, Existing Water Supplies, or Water Demands in the RWPA. A determination that there have been no significant changes may not be based solely on an aggregated, region-wide basis without consideration of sub-regional changes.

(f) If an RWPG elects to pursue simplified planning, it must:

(1) Complete the Technical Memorandum in subsection (c) of this section and, based upon the analysis, determine and document whether significant changes have resulted from the most recently adopted RWP;

(2) Meet new statutory or other planning requirements that come into effect during the most recent planning cycle;

(3) where appropriate, adopt previous RWP or State Water Plan information, updated as necessary, as the IPP and RWP, in accordance with guidance to be provided by the EA; and

(4) conduct other activities upon approval of the EA necessary to complete an RWP that meets rule and statute requirements, including that no water supply sources to the RWPA be over-allocated.

(g) If an RWPG declares intention to pursue simplified planning with the submittal of its Technical Memorandum, in accordance with subsection (c) of this section, the RWPG shall hold a public hearing on the intent to pursue simplified planning for the RWPA, to be held after submitting the Technical Memorandum and in accordance with §357.21(g)(3) of this title. This public hearing is not required for RWPGs that state they will not pursue simplified planning in their Technical Memorandum.

(h) Following receipt of public comments, the RWPG shall hold a meeting in accordance with the requirements of §357.21(g)(1) of this title to consider comments received and declare implementation of simplified planning.

(i) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code.

*n

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code § 16.053 and §15.439 are affected by this rulemaking.
<rule>

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) Each RWPG shall create and maintain a website that they will use to post public notices of all its full RWPG, committee, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with this section.

(c) Each RWPG shall provide a means by which it will accept written public comment prior to and after meetings. The RWPGs must also allow oral public comment during RWPG meetings and hearings.

(d) Each RWPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RWPG activities.

(e) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines and any additional notice requirements provided in subsections (g)(1) - (3) and (h) of this section or any additional notice requirements in the RWPG bylaws, to all voting and non-voting RWPG members and any person or entity who has requested notice of RWPG activities. Notice must also be provided to the following:

(1) if a recommended or Alternative WMS that is located outside of the RWPG is being considered, the RWPG where the recommended or Alternative WMS is located must also receive notice of any meeting or hearing where action or public input may be taken on the recommended or Alternative WMS.

(2) for hearings on declarations of intent to pursue simplified planning, if an RWPG shares a water supply source, WMS, or WMSP with another RWPG, the RWPG declaring intent to pursue simplified planning must notify the RWPG with shared source, WMS, or WMSP.

(3) each project sponsor of an infeasible WMS or WMSP must be provided notice of any meeting or hearing where action may be taken on the infeasible WMS or WMSP.

(f) At a minimum, all meeting and hearing notices must be posted to the RWPG website and on the secretary of state website and must include:

(1) the date, time, and location of the meeting;

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

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(g) In addition to subsections (a) - (f) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available on the RWPG website at least three days prior to and seven

days following the meeting when the planning group will take the following actions:

- (A) regular RWPG meetings and any RWPG committee or subcommittee meetings;
 - (B) approval of requests for funds from the Board;
 - (C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;
 - (D) approval of revision requests for draft population projections and Water Demand projections;
 - (E) adoption of the IPP;
 - (F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;
 - (G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;
 - (H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;
 - (I) adoption of errata pursuant to §357.51(i) of this title (relating to Amendments to Regional Water Plans) to final RWPs.
 - (J) approval of replacement RWPG members to fill voting and non-voting position vacancies; and
 - (K) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.
- (2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:
- (A) approval to submit revision requests to officially adopted Board population and Water Demand projections;
 - (B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;
 - (C) approval to submit the Technical Memorandum;

(D) adoption of the final RWP;

(E) approval to substitute Alternative WMSs; and

(F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the hearing and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

(A) declarations to pursue simplified planning; and

(B) major amendments to RWPs.

(h) when holding pre-planning public meetings to obtain public input on development of the next RWP, holding hearings on the IPP, or making revisions to RWPs based on interregional conflict resolutions, in addition to the requirements of subsection (e) of this section, the following additional public notice and document provisions must be met per TWC §16.053(h):

(1) 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.

(2) at a minimum, notice must be provided at least 30 days prior to the meeting or hearing.

(3) written 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

(B) at least 60 days following the date of the public hearing on an IPP.

(4) if more than one hearing on the IPP is held, the notice and comment periods apply to the date of the first hearing.

(5) additional entities to be notified by mail under this subsection include:

(A) each adjacent RWPG;

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

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

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

(E) each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

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

(6) the public hearings shall be conducted at a central location readily accessible to the public within the regional water planning area.

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing 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. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location in the county courthouse to ensure maximum accessibility to the public during business hours. 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).

(8) Any additional meeting materials associated with meetings in this subsection must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the meeting or hearing.

(i) All notice periods given are based on calendar days.

(j) Each RWPG shall include a statement in their draft and final adopted RWPs regarding the RWPG's conformance with this section.

§357.22 General Considerations for Development of Regional Water Plans

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

(1) Water Conservation Plans;

- (2) drought management and Drought Contingency Plans;
 - (3) information compiled by the Board from water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits);
 - (4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;
 - (5) local and regional water management plans;
 - (6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code §35.019 (relating to Priority Groundwater Management Areas);
 - (7) the Texas Clean Rivers Program;
 - (8) the U.S. Clean Water Act;
 - (9) water management plans;
 - (10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;
 - (11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code §16.054 (relating to Local Water Planning);
 - (12) approved groundwater regulatory plans;
 - (13) potential impacts on public health, safety, or welfare;
 - (14) water conservation best management practices available on the TWDB website; and
 - (15) any other information available from existing local or regional water planning studies.
- (b) The RWP shall contain a separate chapter for the contents of §§357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.45, and 357.50 of this title and shall also contain a separate chapter for the contents of §357.34 and §§357.35, 357.40 and 357.41 of this title for a total of ten separate chapters.

*n

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt

rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code § 16.053 and §15.439 are affected by this rulemaking.
<rule>

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(g)(2) 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 MWPs in accordance with subsection (b) of this section.

§357.32 Water Supply Analysis

(a) RWPGs shall evaluate:

(1) source water Availability during Drought of Record conditions; and

(2) Existing Water Supplies that are legally and physically available to each WUG and WWP within the RWPA for use during the Drought of Record.

(b) Evaluations shall consider surface water and groundwater data from the State Water Plan, existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during Drought of Record conditions.

(c) For surface water supply analyses, RWPGs shall use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. As the default approach for evaluating existing supplies, RWPGs shall assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use better, more representative, water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available and approved in writing by the EA.

(1) Evaluation of existing stored surface water available during Drought of Record conditions shall be based on Firm Yield as defined in §357.10 of this title (relating to Definitions and Acronyms). The analysis may be based on justified operational procedures other than Firm Yield. The EA shall consider a written request from an RWPG to use procedures other than Firm Yield.

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

(d) RWPGs shall use modeled available groundwater volumes for groundwater Availability, as issued by the EA, and incorporate such information in its RWP unless no modeled available

groundwater volumes are provided. Groundwater Availability used in the RWP must be consistent with the desired future conditions as of the most recent deadline for the Board to adopt the State Water Plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent State Water Plan.

(1) An RWP is consistent with a desired future condition if the groundwater Availability amount in the RWP and on which an Existing Water Supply or recommended WMS relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers, in accordance with paragraph (2) of this subsection or as modified by paragraph (3) of this subsection, if applicable. The desired future condition must be either the desired future condition adopted as of the most recent deadline for the Board to adopt the State Water Plan or, at the option of the RWPG, a desired future condition adopted on a subsequent date.

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

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

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

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

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

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

(f) Evaluation results shall be reported by WUG in accordance with §357.31(a) of this title (relating to Projected Population and Water Demands) and MWP in accordance with

§357.31(b) of this title.

§357.33 Needs Analysis: Comparison of Water Supplies and Demands

(a) RWPs shall include comparisons of existing water supplies and projected Water Demands to identify Water Needs.

(b) RWPGs shall compare projected Water Demands, developed in accordance with §357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to WUGs and WWP in a planning area, as developed in accordance with §357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies.

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

(d) 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. WMS and WMSPs shall be developed for WUGs and WWP that would provide water to meet water supply needs during Drought of Record conditions.

(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 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 costs of infrastructure associated with distribution of water within a WUG after

treatment, except for specific, limited allowances for direct reuse and conservation WMSs.

(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) 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) 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) 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.

*n

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code § 16.053 and §15.439 are affected by this rulemaking.

<rule>

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 assessment of current preparations for drought within the RWPA. 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 identify drought response triggers and actions 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. Any excepted information collected shall be submitted separately to the EA in accordance with guidance to be provided by EA.
- (e) RWPGs may 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 may 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.

*n

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code § 16.053 and §15.439 are affected by this rulemaking.

<rule>

SUBCHAPTER E ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

§357.50 Adoption, Submittal, and Approval of Regional Water Plans

- (a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (g)(2) of this section, for approval and inclusion in the State Water Plan.
- (b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG. In the instance of a recommended WMS proposed to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of the IPP, or a letter identifying the WMS in the other region along with an internet link to the IPP, to the RWPG associated with the location of such strategy.
- (c) The RWPGs shall distribute the IPP in accordance with §357.21(h)(7) of this title (relating to Notice and Public Participation).
- (d) Within 60 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential Interregional Conflicts by:
 - (1) identifying the specific recommended WMS from another RWPG's IPP;
 - (2) providing a statement of why the RWPG considers there to be an Interregional Conflict; and
 - (3) providing any other information available to the RWPG that is relevant to the Board's decision.
- (e) The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve Interregional Conflicts.

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

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

(2) any written or oral comments received from any federal agency, Texas state agency, or the public after the first public hearing notice is published until at least 60 days after the public hearing is held pursuant to §357.21(h) of this title.

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

(4) In the event that the Board has not resolved an Interregional Conflict sufficiently early to allow an involved RWPG to modify and adopt its final RWP by the statutory deadline, all RWPGs involved in the conflict shall proceed with adoption of their RWP by excluding the relevant recommended WMS and all language relevant to the conflict and include language in the RWP explaining the unresolved Interregional Conflict and acknowledging that the RWPG may be required to revise or amend its RWP in accordance with a negotiated or Board resolution of an Interregional Conflict.

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

(1) RWPs shall include:

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

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

(C) Documentation of the RWPG's interregional coordination efforts; and

(D) A copy of the EA's comments on the IPP and summaries of all written and oral comments received pursuant to subsection (f) of this section, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (f) of this section.

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

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

(B) Prior to submission of the IPP, the RWPGs shall upload all required data, metadata and all other relevant digital information supporting the plan to the Board's State Water Planning Database. All changes and corrections to this information must be entered into the Board's State Water Planning Database prior to submittal of a final adopted plan.

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

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

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

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

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

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

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

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

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

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

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

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

§357.51 Amendments to Regional Water Plans

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

(1) The petition must state:

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

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

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

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The Political Subdivision that submitted the petition shall receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA, after which the EA shall present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA shall provide the RWPG, the Political Subdivision submitting the petition, and any Political Subdivision determined by the EA to be affected by the issue 30 days notice. At the public meeting, the Board may direct the RWPG to amend its RWP based on the local Political Subdivision's request.

(b) Major Amendments to RWPs and State Water Plan. An RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(g)(3) of this title (relating to Notice and Public Participation). An amendment is major if it does not meet the criteria of subsection (c), (d) or (e) of this section. An RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

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

(2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment pursuant to §357.21(g)(3) of this title. The amendment shall be available for agency and public comment

at least seven days prior to the public hearing and 30 days following the public hearing as required by §357.21(g)(3) of this title.

(3) The proposed major amendment:

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

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

(4) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled RWPG meeting pursuant to §357.21(g)(1) after the public hearing held in accordance with §357.21(g)(3). The amendment shall include response to comments received.

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

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

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

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

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

(B) does not relate to a new reservoir;

(C) does not increase unmet needs or produce new unmet needs in the adopted RWP unless the increase in unmet needs or new unmet needs is the result of removing infeasible WMSs and/or WMSPs in accordance with subsection (g) of this section and Texas Water Code §16.053(h)(10);

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

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

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

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

(4) RWPG Public Meeting. After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(g)(2) of this title. The public shall have an opportunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning responses. The adopted amendment shall include response to comments received.

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

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

(1) the amendment does not significantly change the RWP; or

(2) the amendment does not adversely affect other WMSs in the RWP.

(e) Substitution of Alternative WMSs. RWPGs may substitute one or more evaluated Alternative Water Management Strategies for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the Alternative WMS is capable of meeting the same Water Need without over-allocating any source. Before substituting an Alternative WMS, the RWPG must provide public notice in accordance with §357.21(g)(1) of this title and request written approval from the EA. If the EA approves the substitution, the RWPG must provide public notice in accordance with §357.21(g)(2) of this title before taking action to substitute the Alternative WMS.

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

(g) Amendment for Infeasible Recommended WMSs or WMSPs. Following the results of the analysis presented at a public meeting in accordance with §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures), an RWPG shall amend an adopted RWP to remove an infeasible recommended WMS or WMSP, as defined by Texas Water Code §16.053(h)(10). The RWPG will follow the amendment processes in

accordance with subsections (b), (c), or (e) of this section. An amendment for infeasible recommended WMSs or WMSPs shall be submitted to the Board by a date established by the EA. The amendment shall summarize the project components and address why they were determined to be infeasible. The amendment must also summarize any changes to unmet needs as a result of removing the infeasible WMS or WMSP. Subsequent amendments during the planning cycle for infeasible recommended WMS or WMSP may occur at the discretion of the RWPG based upon information presented to the RWPG by project sponsors.

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

(i) Errata to RWPs. RWPGs may adopt errata to the final RWP to correct minor, non-substantive errors identified after adoption of the final RWP but prior to adoption of the corresponding State Water Plan. Before adopting errata to a final RWP, the RWPG must provide public notice and receive comments in accordance with §357.21(g)(1) of this title. Upon adoption of the errata, the RWPG shall submit to the EA an errata package containing revised pages of the RWP and public comments received. The EA will notify the RWPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

*n

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code § 16.053 and §15.439 are affected by this rulemaking.

<rule>

SUBCHAPTER F CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

§357.62 Interregional Conflicts

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

(1) notify the affected RWPGs of the nature of the interregional conflict;

(2) request affected RWPGs appoint a representative or representatives authorized to negotiate on behalf of the RWPG and notify the EA in writing of the appointment;

(3) request affected RWPGs' assistance in resolving the conflict; and

(4) negotiate resolutions of conflicts with RWPGs as determined by the EA.

(b) In the event the negotiation is unsuccessful, the EA may:

(1) determine a proposed recommendation for resolution of the conflict;

(2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the *Texas Register* and in a newspaper of general circulation in each county located in whole or in part in the RWPGAs involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(h) of this title (relating to Notice and Public Participation) in the RWPGAs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPGAs proposed to be impacted and to each affected RWPG;

(3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, Political Subdivisions, and members of the public on the issues identified by the Board as unresolved problems; and

(4) make a recommendation to the Board for resolution of the conflict.

(c) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.

(d) The EA shall notify affected RWPGs of Board's decision and shall direct changes to the affected RWPGs, to be incorporated in accordance with Texas Water Code §16.053(h)(6).

31 TAC Ch 358 Adopted Amendments

The Texas Water Development Board (“TWDB” or “board”) adopts amendments to 31 Administrative Code (TAC) §§358.3 and 358.4. The proposal is adopted without changes as published in the December 31, 2021, issue of the Texas Register (46 TexReg 9213).

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

The purpose of the amendments to 31 TAC §358 is to address concerns raised by regional water planning group stakeholders, through preliminary input on guidance principles review as required by Texas Water Code §16.051(d), and the Interregional Planning Council to clarify that regional water planning groups may plan for drought conditions worse than the drought of record. The revisions also clarify language throughout the section including adding the term water management strategy project.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter A. State Water Plan Development.

Section §358.3. Guidance Principles.

Section §358.3(2) is revised to clarify that regional water planning groups, at their discretion, may plan for drought conditions worse than the drought of record. This revision reflects and better accommodates recent planning efforts by some RWPGs to plan beyond the drought of record. It is also responsive to preliminary input received from stakeholders and addresses the 2020 Interregional Planning Council recommendations to the TWDB. The revision does not require that regional water planning groups plan for drought conditions worse than the drought of record.

Section §358.3(8) is revised to include water management strategy projects. The term water management strategy projects is added through the section to align the state water planning guidance principles terminology with Regional Water Planning administrative rules. Water management strategy projects are distinct from the term water management strategy. As defined in Section §357.10(41) a water management strategy project is a “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.”

Section §358.3(9) is revised to include water management strategy projects and add clarity to the rule.

Section §358.3(20) is revised to add clarity to the rule.

Section §358.3(21) is revised to include water management strategy projects.

Section §358.3(22) is revised to include water management strategy projects.

Section §358.3(26) is revised to include water management strategy projects and reference the appropriate subsections of §357.34.

Section §358.4. Guidelines.

Section §358.4(b)(2) is revised to clarify the livestock water user group terminology and add clarity to the rule.

Section §358.4(b)(4)(G) is revised to clarify the livestock water user group terminology.

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 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 is no change in costs for state or local governments to comply with the adopted revision. 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.

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 the health, safety, and welfare of the residents of this state.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the rulemaking is in effect, the public will benefit from the rulemaking as it will clarify existing rule language, align the guidance principle terminology with regional water planning rule language, and clarify that regional water planning groups may plan for drought conditions worse than the drought of record.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the adopted rule does not adversely affect a local economy in a material way for the first five years that the 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 adopted rulemaking. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the 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 clarify existing language, align the guidance principle terminology with regional water planning rule language, and clarify that regional water planning groups may plan for drought conditions worse than the drought of record.

Even if the 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 the standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under the authority of Texas Water Code §§ 16.051 and 16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify existing language, align the guidance principle terminology with regional water planning rule language, and clarify that regional water planning groups may plan for drought conditions worse than the drought of record. The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would

otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the adopted 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 adopted rule would be in effect, the adopted 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.

PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC), City of Austin, Freese and Nichols, Inc. (FNI), National Wildlife Federation (NWF), Sierra Club Lone Star Chapter, and Texas 2036.

Regarding

Section 358.3 Guidance Principles.

Comment

The City of Austin commented that it supports development of guidance to assist regional water planning groups in addressing the risks of droughts worse than the drought of record.

Response

The TWDB appreciates this comment. No change has been made in response to this comment.

Comment

Texas 2036 commented that 31 TAC Chapter 358 should be expanded to include broader contemplation of water markets and proposed that §358.3(10) be revised to specify consideration of water markets.

Response

The TWDB appreciates this comment, but it is outside the scope of this rulemaking. No change has been made in response to this comment.

Comment

Sierra Club Lone Star Chapter and NWF provided additional guidance principles be added to §358.3 or incorporated into guidance for the sixth round of regional water planning including

the topics of evaluating social vulnerability, consideration of changes in climate and the impact on planning, holistic management and resilience of water resources, and consideration of surface and groundwater resources in the development of water management strategies.

Response

The TWDB appreciates this comment. The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comments request the addition of new guidance principles. The TWDB will take these items into consideration as appropriate when developing guidance for the sixth planning cycle. No change has been made in response to this comment.

Comment

CTWC, City of Austin, FNI, and Texas 2036 commented that they support the proposed addition to §358.3(2) regarding clarification that regional water planning groups may plan for drought conditions worse than the drought of record.

Response

The TWDB appreciates these comments. No change has been made in response to these comments.

Comment

Sierra Club Lone Star Chapter and NWF commented that they do not disagree with regional water planning groups being able to plan for drought conditions worse than the drought of record and suggested that the phrase “at their discretion” be removed from the proposed language in §358.3(2). Sierra Club Lone Star Chapter and NWF commented that “at their discretion” is redundant and may convey a sense that planning groups have no criteria or parameters to consider in deciding whether to plan for conditions worse than the drought of record.

Sierra Club Lone Star Chapter and NWF also commented that the TWDB should provide guidance to regions on how to assess and respond to the prospects for droughts worse than the drought of record to produce a consistent approach across all regions. It was recommended that the guidance include specific criteria and metrics for evaluating risks, additional attention to demand management to address such droughts, and limitations on using droughts worse than the drought of record as a rationale for recommending water projects in excess of projected needs. If the TWDB intends to provide guidance on planning for droughts worse than the drought of record, it is suggested that the proposed phrase “at their discretion” in §358.3(2) be revised to “consistent with guidance developed by the Board”.

Response

The TWDB appreciates this comment. The TWDB intends to provide illustrative examples of ways planning groups could address uncertainty in water planning in regional water planning contract guidance documents for the current planning cycle. However, since the decision of whether to plan for drought conditions worse than the drought of record is left to the planning

group's discretion, TWDB considers the proposed rule language appropriate. No changes have been made in response to this comment.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code § 6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code § 16.051 which provides the TWDB with the authority to adopt rules necessary to develop the state water plan and § 16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute.

Texas Water Code §§ 16.051 and 16.053 are affected by this rulemaking.

<rule>

CHAPTER 358 STATE WATER PLANNING GUIDELINES

SUBCHAPTER A STATE WATER PLAN DEVELOPMENT

§358.3 Guidance Principles

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

- (1) The state water plan shall provide for the preparation for and response to drought conditions.
- (2) The regional water plans and state water plan shall serve as water supply plans under drought of record conditions. RWPGs may, at their discretion, plan for drought conditions worse than the drought of record.
- (3) Consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources.
- (4) Regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the affected regional water planning areas and the state.
- (5) Regional water plans shall include identification of those policies and action that may be needed to meet Texas' water supply needs and prepare for and respond to drought conditions.
- (6) RWPG decision-making shall be open to and accountable to the public with decisions based

on accurate, objective and reliable information with full dissemination of planning results except for those matters made confidential by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) RWPGs shall actively coordinate water planning and management activities to identify common needs, issues, and opportunities for interregional water management strategies and water management strategy projects to achieve efficient use of water supplies. The Board will support RWPGs coordination to identify common needs, issues, and opportunities while working with RWPGs to resolve conflicts in a fair, equitable, and efficient manner.

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

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

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

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

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

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

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

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

§358.4 Guidelines

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

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

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

(2) Description of methods used for projecting future population and water demands for municipal and associated commercial and institutional uses, and projecting future water demands for manufacturing, irrigation, steam electric power generation, mining, and livestock water uses;

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

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

(A) Demands for water;

(B) Supplies currently available;

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

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

(E) Recommended solutions to meet needs;

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

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

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

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

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

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

(9) With respect to projects included in the preceding state water plan that were given a high priority by the board for purposes of providing financial assistance under Texas Water Code, Chapter 15, Subchapter G:

(A) an assessment of the extent to which the projects were implemented in the decade in which they were needed; and

(B) an analysis of any impediments to the implementation of any projects that were not implemented in the decade in which they were needed.