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## AGENDA ITEM MEMO

**BOARD MEETING DATE:** December 16, 2025

**TO:** Board Members

**THROUGH:** Bryan McMath, Executive Administrator  
Ashley Harden, General Counsel  
Jessica Peña, Deputy Executive Administrator, Water Supply and Infrastructure  
Georgia Sanchez, Chief Financial Officer

**FROM:** Marvin Cole-Chaney, Director, Program Administration and Reporting  
Michael Perez, Assistant General Counsel  
Trae Tillis, Manager of State Programs, Program Administration

**SUBJECT:** Proposed rulemaking for 31 TAC Chapter 363 related to Financial Assistance Programs.

### **ACTION REQUESTED**

Consider authorizing the publication of proposed amendments to 31 Texas Administrative Code (TAC) Chapter 363.

### **BACKGROUND**

Chapter 363 contains the agency's programmatic rules related to the agency's state funded financial assistance programs. The proposed amendments will implement legislation and clarify eligibility for applicants.

### **KEY ISSUES**

This rulemaking proposes amendments to implement House Bill 3582's "rural political subdivision" definition passed by 88th Texas Legislature, regular session. The rural political subdivision definition includes water and sewer supply corporations, districts, authorities, municipalities, and counties that meet specified population requirements. An eligible entity can still qualify as a rural political subdivision, despite not meeting the specified population requirements, if it demonstrates in a manner satisfactory to the board that the entity is rural or the area to be served by the project is a wholly rural area.

This rulemaking also proposes amendments to implement Senate Bill 1967, which was passed by the 89th Texas Legislature, regular session. Senate Bill 1967 expanded the grant eligibility of drainage districts under the Water Loan Assistance Fund program and

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Leading the state's efforts	:	L'Oreal Stepney, P.E., Chairwoman   W. Brady Franks, Board Member   Ashley Morgan, Board Member
in ensuring a secure	:	
water future for Texas	:	Bryan McMath, Executive Administrator

expanded the definition of flood project under the agency's Flood Infrastructure Fund program to include multi-purpose projects.

This rulemaking proposes amendments to implement Senate Bill 1967's requirement that the TWDB consider whether a water supply project contains a flood control component when prioritizing projects under the State Water Implementation Fund for Texas (SWIFT) program. The rulemaking also proposes to award one point for a water supply project that contains a flood control component to the SWIFT prioritization criteria used to assess abridged applications. The rulemaking also proposes a definition for a flood control component under the agency's SWIFT rules.

This rulemaking proposes an amendment to implement Senate Bill 1261, passed by the 89th Texas Legislature, regular session, which establishes "not to exceed" term parameters for an "eligible project" under TWDB's SWIFT Program.

### **RECOMMENDATION**

The Executive Administrator recommends authorizing the publication of proposed amendments to 31 Texas Administrative Code (TAC) Chapter 363.

Attachment:

Proposed rulemaking to be filed with *Texas Register*.

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §363.2, §363.17, §363.1302, §363.1304, §363.1305, §363.402, and §363.405.

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

Chapter 363 contains the TWDB's programmatic rules for many of the agency's state funded financial assistance programs. The TWDB proposes to amend the rules to implement legislation.

House Bill 3582, 88th R.S. (2023) and Senate Bill 469, 88th R.S. (2023), amended Chapters 15 of the Water Code by adding two similar but non-identical general definitions of "rural political subdivision." Senate Bill 971, 89th R.S. (2025) repealed SB 469's definition of rural political subdivision. HB 3582 also amended Chapter 15 of the Water Code by making a conforming change to a permissible use of funds category in the Flood Infrastructure Fund program by substituting "a rural political subdivision" in place of "an area outside of a metropolitan statistical area". This rulemaking implements HB 3582's definition of "rural political subdivision" applicable to the agency's state funded financial assistance programs in Chapter 363.

Senate Bill 1967, 89th R.S. (2025), amended Chapter 15 of the Water Code by specifying that under the TWDB's Water Loan Assistance Fund program, certain drainage districts are eligible to receive grants for water supply projects, including projects that contain a flood control element, and prohibits disqualification because a district lacks historical data water use, does not provide retail water service, or does not have a certificate of convenience and necessity. This rulemaking implements SB 1967's grant eligibility of certain drainage districts under the Water Loan Assistance Fund program rules in Chapter 363.

SB 1967 also amended Chapter 15 of the Water Code by adding additional criterion that TWDB must consider when prioritizing projects for financial assistance under the State Water Implementation Fund for Texas (SWIFT) program. When prioritizing projects under the SWIFT program, the TWDB must also consider whether a project is a water supply project that contains a flood component, regardless of whether the applicant holds a certificate of convenience and necessity. This rulemaking implements SB 1967's additional prioritization consideration under the SWIFT program rules in Chapter 363.

SB 1967 additionally amended Chapter 15 of the Water Code by expanding the definition of "Flood project" applicable to the TWDB's Flood Infrastructure Fund (FIF) program. The definition of "Flood project" now includes the construction of multi-purpose flood mitigation and drainage infrastructure projects that control, divert, capture, or impound flood water, stormwater, agricultural runoff water, or treated wastewater effluent and treat and distribute the water for the purpose of creating an additional source of water supply. This rulemaking implements SB 1967's expanded definition of a Flood Project under the FIF program rules in Chapter 363.

Senate Bill 1261, 89th R.S. (2025), amended TWDB's SWIFT Program in Chapter 15 of the Water Code by specifying the not to exceed term for an "eligible project", as defined by Section

1373.001 of the Government Code. The loan term for an “eligible project” may not exceed the lesser of the expected useful life of the facility or 40 years. This rulemaking implements SB 1261’s not to exceed term parameters for an “eligible project” under TWDB’s SWIFT program rules in Chapter 363.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

### Chapter 363 Financial Assistance Programs

#### Subchapter A. General Provisions

##### Division 1. Introductory Provisions

###### §363.2. Definitions of Terms.

The proposed amendment revises the definition of rural political subdivision in §363.2(26) to implement HB 3582.

##### Division 2. General Application Provisions

###### §363.17. Grants from Water Loan Assistance Fund.

The amendment proposes §363.17(c) and (d) to implement SB 1967, expanding grant eligibility of certain drainage districts under the Water Loan Assistance Fund program as well as a renumbering of the remaining subsections.

#### Subchapter M. State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas Water Development Board

###### §363.1302. Definition of Terms.

The amendment proposes to add a definition of flood control component and to remove the definition of rural political subdivision currently in §363.1302(15) and to renumber the subsections accordingly. Unless in conflict, Subchapter A of Chapter 363 applies to projects under Subchapter M of Chapter 363. To avoid duplicative definitions across Subchapters in Chapter 363, TWDB intends to rely on the proposed amended definition of rural political subdivision in §363.2(26) for TWDB’s SWIFT program projects.

###### §363.1304. Prioritization Criteria.

The amendment proposes §363.1304(12) to implement SB 1967’s additional criterion that TWDB must consider when prioritizing SWIFT projects for financial assistance and renumbers the remaining subsection. The amendment proposes awarding one point for water supply projects that contain a flood control component and zero points for water supply projects that do not contain a flood component. An amendment is also proposed for §363.1304(6) to correct a typographical error and to account for the addition of proposed criterion.

###### §363.1305. Use of Funds.

The amendment proposes a revision to §363.1305(a)(2)(B) to implement SB 1261, which establishes “not to exceed” term parameters for an “eligible project” under TWDB’s SWIFT Program, as defined by §1373.001 of the Texas Government Code.

## Subchapter D. Flood Financial Assistance.

### §363.402. Definitions.

The proposed amendment expands the definition of flood project by the addition of §363.402(6)(G) to implement SB1967. The proposed amendment also removes the definition of a metropolitan statistical area currently in §363.402(8) to implement HB 3582 and renumbers the remaining subsections. To avoid duplicative definitions across Subchapters in Chapter 363, TWDB intends to rely on the proposed amended definition of rural political subdivision in §363.2(26) for TWDB's FIF program projects.

### §363.405. Use of Funds.

The proposed amendment revises §363.405(a)(2) to substitute "a rural political subdivision" in place of "an area outside of a metropolitan statistical area" to implement HB 3582.

## FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

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

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. 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, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

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

## PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility requirements for TWDB applicants and implements legislation. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the

rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB 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 TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislation and clarify eligibility requirements.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §6.101, §15.011, §15.439, §15.472, and §15.537. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be

submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify requirements for borrowers. The proposed rule would substantially advance this stated purpose by aligning the rule's definitions, permissible use of funds, eligibility, and loan term parameters with Water Code, Chapter 15.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the applicable financial assistance programs.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes by aligning the rule's definitions, permissible use of funds, borrower eligibility, and loan term parameters with Water Code, Chapter 15. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

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

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. If sent via email, all

public comments should be sent directly to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov). Please do not submit comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the Texas Register. Include Chapter 363 in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of 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, and also under the authority of Texas Water Code §15.011, §15.439, §15.472, and §15.537.

This rulemaking affects Water Code, Chapter 15.

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#### §363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

- (1) Applicant--The entity applying for financial assistance, including the entity that receives the financial assistance, the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the applicant.
- (2) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.
- (3) Board--Texas Water Development Board.
- (4) Building--Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.
- (5) Certification of trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the loan proceeds in accordance with §114.086, Texas Property Code.
- (6) Closing--The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.
- (7) Commission--Texas Commission on Environmental Quality.

- (8) Commitment--An offer by the board to provide financial assistance to an applicant who timely fulfills the conditions required in a board resolution.
- (9) Community Water System - Has the meaning assigned by 30 TAC §290.38.
- (10) Construction account--A separate account created and maintained for the deposit of loan funds and utilized by the applicant to pay eligible expenses of the project.
- (11) Corporation--A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.
- (12) Debt--All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.
- (13) Department--Texas Department of State Health Services.
- (14) Escrow account--A separate account maintained by an escrow agent for the board's deposit of escrowed funds until such funds are eligible for release to the construction account.
- (15) Escrow agent--Any of the following:
- (A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;
  - (B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or
  - (C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.
- (16) Executive administrator--The executive administrator of the board or a designated representative.
- (17) Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15, Subchapters B, C, E, G, H, O, P, and Q; Chapter 16, Subchapters E, and F; Chapter 17, Subchapters D, F, G, I, K, and L; and Chapter 36, Subchapter L.
- (18) Grants--Financial assistance provided by the board for which repayment is not required.
- (19) Innovative technology--Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.
- (20) Legislative Designation--A designation made by the legislature in accordance with §16.051(f) and (g), Texas Water Code.
- (21) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for

the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(22) Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(23) Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(24) Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(25) Risk-Based Review-- Method of review of plans, specifications, and related documents for sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to Texas Water Code §17.276.

(26) Rural Political Subdivision--

(A) a [A] nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area of which is located in an urban area with a population of more than 50,000;

(B) a municipality:

(i) with a population of 10,000 or less no part of the service area of which is located in an urban area with a population of 50,000 or more; or

(ii) located wholly in a county in which no urban area has a population of more than 50,000;

(C) a county in which no urban area has a population of more than 50,000; or

(D) an entity that:

(i) is a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code, a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, municipality, county, or other political subdivision of the state, or an interstate compact commission to which the state is a party; and

(ii) demonstrates in a manner satisfactory to the board that the entity is rural or the area to be served by the project is a wholly rural area despite not otherwise qualifying under subparagraph (A), (B), (C) of this paragraph.

(27) SWIFT--The state water implementation fund for Texas.

(28) SWIRFT--The state water implementation revenue fund for Texas.

(29) Water Plan--The current state water plan prepared and adopted in accordance with Texas Water Code, §16.051.

(30) WIF--The water infrastructure fund.

(31) WLAF--The water loan assistance fund.

## DIVISION 2. GENERAL APPLICATION PROCEDURES

### §363.17. Grants from Water Loan Assistance Fund.

(a) The board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

(A) from a community water system do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D, and any applicable standards of any governmental unit with jurisdiction over such area;

(B) from individual wells after treatment do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D, and any applicable standards of any governmental unit with jurisdiction over such area; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(2) sewer services:

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 305;

(B) for on-site sewerage facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 285; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(3) for purposes of any federal funds for colonias deposited in the water assistance fund, such area meets the federal criteria for use of such funds.

(b) The board may also provide grants from the Water Loan Assistance Fund for projects:

(1) for which federal grant funds are placed in the loan fund;

(2) for which a specific legislative appropriation is made; or

(3) for water conservation, desalination, brush control, weather modification, and regionalization and for providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

(c) The board may also provide grants to drainage districts established under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, for water supply projects, including projects that contain a flood control component.

(d) The board may not disqualify a drainage district from receiving a grant under Subsection (c) because the district does not:

(1) notwithstanding §16.012(m) of the Texas Water Code and §358.5 of this title (relating to Ground Water and Surface Water Use Surveys), have historical data about water use;

(2) provide retail water service to consumers; or

(3) have a certificate of convenience and necessity under which it provides retail water or wastewater service.

(e) [(e)] Grant funds will be administered according to the terms of an agreement between the board and the grantee.

(f) [(f)] For purposes of this section, conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the real or apparent loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of 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, and also under the authority of Texas Water Code §15.439 and §15.472.

This rulemaking affects Water Code, Chapter 15.

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§363.1302. Definition of Terms.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural water conservation--Those practices, techniques or technologies used in agriculture, as defined in Texas Agriculture Code, which will improve the efficiency of the use of water and further water conservation in the state, including but not limited to those programs or projects defined in Texas Water Code §§17.871 - 17.912.

(2) Agricultural irrigation project--Those projects which improve water delivery or application efficiency on agricultural lands, or involve purchase and installation on agricultural public or

private property of new water sources, new irrigation systems, or devices designed to indicate the amount of water withdrawn for agricultural irrigation purposes.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Commission--The Texas Commission on Environmental Quality or its successor.

(5) Entity--A political subdivision or nonprofit water supply or sewer service corporation.

(6) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(7) Executive administrator--The executive administrator of the board or a designated representative.

(8) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

(9) Facility--A regional facility for which an application has been submitted requesting board participation and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(10) Flood control component--A component that provides a quantified reduction of risk and impact of flooding to life and property.

(11) [(10)] Historically Underutilized Business--The meaning assigned by Government Code §2161.001, and the regulations adopted pursuant thereto.

(12) [(11)] Household Cost Factor--The average annual cost of service per household divided by the median household income.

(13) [(12)] Nonprofit water supply or sewer service corporation--A water or sewer service corporation operating under Texas Water Code, Chapter 67.

(14) [(13)] Political subdivision--Includes a city, county, district or authority created under the Texas Constitution Article III, Section 52, or Article XVI, Section 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.

(15) [(14)] Reuse--The beneficial use of groundwater or surface water that has already been beneficially used.

~~[(15) Rural political subdivision--A nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population based upon the most current data available from the U.S. Bureau of the Census or board approved projections, or that otherwise qualifies for financing from a federal agency; or a county in which no urban~~

~~political subdivision exceeds 50,000 in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.]~~

(16) Rural population--Residents of a rural political subdivision.

(17) Urban population--Residents of a political subdivision with a population of more than 10,000 individuals based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.

(18) Water conservation--Those 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, so that a water supply is made available for future or alternative uses.

(19) Water plan project--A project that is a recommended water management strategy in the current board-adopted state water plan.

(20) Water supply need--Projected water demands in excess of existing supply as identified in the state water plan.

§363.1304. Prioritization Criteria.

The executive administrator will prioritize applications based on the following point system:

(1) Projects will be evaluated on the criteria provided in paragraphs (2) - (5) of this section. The points awarded for paragraphs (2) - (5) of this section shall be the lesser of the sum of the points for paragraphs (2) - (5) of this section, or 50 points.

(2) Either stand-alone projects or projects in conjunction with other recommended water management strategies relying on the same volume of water that the project relies on, in accordance with Chapter 357 of this title (relating to Regional Water Planning), that will serve in total when the project water supply volume is fully operational:

(A) at least 10,000 population, but not more than 249,999 population, 6 points; or

(B) at least 250,000 population, but not more than 499,999 population, 12 points; or

(C) at least 500,000 population, but not more than 749,999 population, 18 points; or

(D) at least 750,000 population, but not more than 999,999 population, 24 points; or

(E) at least 1,000,000 population, 30 points; or

(F) less than 10,000 population, zero points.

(3) Projects that will serve a diverse urban and rural population:

(A) serves one or more urban populations and one rural population, 10 points; and

(B) for each additional rural population served, 4 points up to a maximum of 30 points; or

(C) serves only an urban population, or only a rural population, zero points.

(4) As specified in the application, projects which provide regionalization:

(A) serves additional entities other than the applicant, 5 points per each political subdivision served for a maximum of 30 points; or

(B) serves only applicant, zero points.

(5) Projects that meet a high percentage of the water supply needs of the water users to be served calculated from those served and needs that will be met during the first decade the project becomes operational, based on state water plan data:

(A) at least 50 percent of needs met, 10 points; or

(B) at least 75 percent of needs met, 20 points; or

(C) at least 100 percent of needs met, 30 points; or

(D) less than 50 percent of needs met, zero points.

(6) Projects will receive additional points of the project's score on each of the criteria of paragraphs (7) [~~(17)~~] - (13) [~~(12)~~] of this section.

(7) Local contribution to be made to implement the project, including federal funding, and including up-front capital, such as funds already invested in the project or cash on hand and/or in-kind services to be invested in the project, provided that points will not be given for principal forgiveness or grants from the board:

(A) other funding at least 10 percent, but not more than 19 percent, of total project cost, 1 point; or

(B) other funding at least 20 percent, but not more than 29 percent, of total project cost, 2 points; or

(C) other funding at least 30 percent, but not more than 39 percent, of total project cost, 3 points; or

(D) other funding at least 40 percent, but not more than 49 percent, of total project cost, 4 points; or

(E) other funding at least 50 percent of total project cost, 5 points; or

(F) other funding less than 10 percent of total project cost, zero points.

(8) Financial capacity of the applicant to repay the financial assistance provided:

(A) applicant's household cost factor is less than or equal to 1 percent, 2 points; or

(B) applicant's household cost factor is greater than 1 percent but not more than 2 percent, 1 point; or

(C) applicant's household cost factor is greater than 2 percent, zero points.

(9) Projects which address an emergency need:

(A) applicant, or entity to be served by the project, is included on the list maintained by the Commission of local public water systems that have a water supply that will last less than 180 days without additional rainfall, or is otherwise affected by a Commission emergency order, and drought contingency plan has been implemented by the applicant or entity to be served, 3 points; plus

(B) water supply need is anticipated to occur in an earlier decade than identified in the most recent state water plan, 1 point; plus

(C) applicant has used or applied for federal funding for emergency, 1 point; or

(D) none of the above, zero points.

(10) Projects which are ready to proceed:

(A) preliminary planning and/or design work (30 percent of project total) has been completed or is not required for the project, 3 points; plus

(B) applicant is able to begin implementing or constructing the project within 18 months of application deadline, 3 points; plus

(C) applicant has acquired all water rights associated with the project or no water rights are required for the project, 2 points; or

(D) none of the above, zero points.

(11) Entities that have demonstrated water conservation or projects which will achieve water conservation, including preventing the loss of water:

(A) for municipal projects, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for most recent four-year period:

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) less than 2 percent total gallons per capita per day reduction, zero points.

(B) for municipal projects, applicant has achieved the water loss threshold established by §358.6 of this title (relating to Water Loss Audits), as demonstrated by most recently submitted water loss audit:

(i) less than the threshold, 5 points; or

(ii) at or above the threshold, zero points.

(C) for wholesale water providers, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data for customers affiliated with the application; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for the most recent four-year period for customers affiliated with the application.

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) less than 2 percent total gallons per capita per day reduction, zero points.

(D) for agricultural projects, significant water efficiency improvements will be achieved by implementing the proposed project, as determined by the projected percent improvement:

(i) 1 to 1.9 percent increase in water use efficiency, 1 point; or

(ii) 2 to 5.9 percent increase in water use efficiency, 3 points; or

(iii) 6 to 9.9 percent increase in water use efficiency, 6 points; or

(iv) 10 to 13.9 percent increase in water use efficiency, 9 points; or

(v) 14 to 17.9 percent increase in water use efficiency, 12 points; or

(vi) 18 percent or greater increase in water use efficiency, 15 points; or

(vii) less than 1 percent increase in water use efficiency, zero points.

(12) If the project is a water supply project that contains a flood control component, regardless of whether the applicant holds a certificate of convenience and necessity under which it provides retail water or wastewater service:

(A) does contain a flood control component, 1 point; or

(B) does not contain a flood control component, zero points.

(13) [(12)] If two or more projects receive the same priority ranking, priority will be assigned based on the relative score(s) from paragraph (11) of this section. If after considering the relative scores of the projects based on the criteria of paragraph (11) of this section, then priority will be assigned based on the relative score(s) from paragraph (9) of this section.

§363.1305. Use of Funds.

(a) The board may use the funds for financial assistance to political subdivisions as follows:

(1) to make loans at or below market interest rates, but not lower than 50 percent of the board's market rate;

(2) to make loans with terms not to exceed the lesser of:

(A) the expected useful life of the project assets; or

(B) 30 years [years;] or, for an eligible project, as defined by §1373.001 of the Texas Government Code, 40 years;

(3) to defer loan repayments, including deferral of principal and interest or accrued interest under criteria developed by the board;

(4) to make loans with incremental repurchase terms for an acquired facility, including terms for no initial repurchase payment followed by progressively increasing incremental levels of interest payment, repurchase of principal and interest, and ultimate repurchase of the entire state interest in the facility using simple interest calculations; or

(5) a combination of the financing outlined in paragraphs (1) - (4) of this subsection.

(b) The board may make funding available under subsection (a) of this section only for implementation of water plan projects.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of 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, and also under the authority of Texas Water Code §15.537.

This rulemaking affects Water Code, Chapter 15.

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<rule>

§363.402. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Drainage--includes, but is not limited to, the construction or rehabilitation of bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(2) Eligible political subdivision--a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a district or river authority that is subject to Chapter 49 of the Texas Water Code and participates in cooperative flood control planning, a municipality, or a county.

(3) Flood control--the construction or rehabilitation of structural mitigation or anything that retains, diverts, redirects, impedes, or otherwise modifies the flow of water.

(4) Flood mitigation--the implementation of actions, including both structural and nonstructural solutions, to reduce flood risk to protect against the loss of life and property.

(5) Flood Intended Use Plan--a document adopted by the board that identifies the uses of the funds for flood projects.

(6) Flood project--a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage;

(C) construction of structural flood mitigation and drainage projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(D) construction and implementation of nonstructural projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(E) nonstructural or natural flood control strategies; [~~and~~]

(F) a federally authorized project to deepen a ship channel affected by a flooding event; [~~event.~~]  
and

(G) construction of multi-purpose flood mitigation and drainage infrastructure projects that control, divert, capture, or impound floodwater, stormwater, agricultural runoff water, or treated wastewater effluent and treat and distribute the water for the purpose of creating an additional source of water supply.

(7) Nonstructural flood mitigation--includes, but is not limited to, measures such as acquisition of floodplain land for use as public open space, acquisition and removal of buildings located in a floodplain, relocation of residents of buildings removed from a floodplain, flood warning

systems, educational campaigns, land use planning policies, watershed planning, flood mapping, and acquisition of conservation easements.

~~[(8) Metropolitan statistical area--an area so designated by the United States Office of Management and Budget.]~~

~~(8)~~ [(9)] Project Watershed--the area upstream and downstream substantially affected by the proposed flood project, as documented in the project application and sealed by a Professional Engineer or Professional Geoscientist.

~~(9)~~ [(10)] Structural flood mitigation--includes, but is not limited to, measures such as construction of storm water retention basins, enlargement of stream channels, modification or reconstruction of bridges, coastal erosion control measures, or beach nourishment.

#### §363.405. Use of Funds.

(a) The board may use the funds for financial assistance to eligible political subdivisions as follows:

- (1) to make a loan to an eligible political subdivision at or below market interest rates for a flood project;
- (2) to make a grant or loan at or below market interest rates to an eligible political subdivision for a flood project to serve a rural political subdivision ~~[an area outside of a metropolitan statistical area]~~ in order to ensure that the flood project is implemented;
- (3) to make a loan at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;
- (4) to make a grant to an eligible political subdivision to provide matching funds to enable the eligible political subdivision to participate in a federal program for a flood project;
- (5) to make a grant to an eligible political subdivision for a flood project if the board determines that the eligible political subdivision does not have the ability to repay a loan;
- (6) to meet matching requirements for projects funded partially by federal money; and
- (7) to make a loan to an eligible political subdivision below market interest rates and under flexible repayment terms, including a line of credit or loan obligation with early repayment terms, to provide financing for the local share of a federally authorized ship channel improvement project.

(b) The board may also use the fund to make transfers to the research and planning fund created under Texas Water Code Section 15.402, which may be used to provide money for flood control planning, as described in Texas Water Code Chapter 15, Subchapter F and 31 Texas Administrative Code Chapter 355.

(c) The board reserves the right to limit the amount of funding available to an individual entity.