

**Water Planning Rules (31 TAC) and Texas
Statute Reference Pamphlet for Regional
Water Planning¹**

(as of October 2012)



¹ Excerpts from agency planning rules and Texas statute, this is provided as a tool to aid in the Regional Water Planning process and is not comprehensive on every law that may apply. For complete, up to date documents, please visit our website at: <http://www.twdb.texas.gov/about/rules/>

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Texas Administrative Code

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 10 TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357 REGIONAL WATER PLANNING

SUBCHAPTER A GENERAL INFORMATION

RULE §357.10

Definitions and Acronyms

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

- (1) 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.
- (2) Availability--Maximum amount of water available from a source during the drought of record, regardless of whether the supply is physically or legally available to water user groups.
- (3) Board--The Texas Water Development Board.
- (4) 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.
- (5) Commission--The Texas Commission on Environmental Quality.
- (6) Consistency between a regional water plan and a desired future condition--A regional water plan is consistent with a desired future condition if the groundwater availability amount in the regional water plan and on which an existing water supply or recommended water management strategy relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.
- (7) County-other--An aggregation of residential, commercial, and institutional water users in cities with less than 500 people or utilities that provide less than an average of 250,000 gallons per day, as well as unincorporated rural areas in a given county.
- (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 of record--The period of time when natural hydrological conditions provided the least amount of water supply.

(11) Executive administrator (EA)--The executive administrator of the Board or a designated representative.

(12) Existing water supply--Maximum amount of water available from existing sources for use during drought of record conditions that is physically and legally available for use by a water user group.

(13) Firm yield--Maximum water volume a reservoir can provide each year under a repeat of the drought of record using reasonable sedimentation rates and assuming that all senior water rights will be totally utilized.

(14) 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.

(15) Interregional conflict--An interregional conflict exists when more than one regional water plan relies upon the same water source, so that there is not sufficient water available to fully implement both plans and would create an over-allocation of that source.

(16) Intra-regional conflict--A conflict between two identified, quantified, and recommended water management strategies in the same adopted regional water plan that rely upon the same water source, so that there is not sufficient water available to fully implement both water management strategies and thereby creating an over-allocation of that source.

(17) Initially Prepared Plan (IPP)--Draft regional water plans that are presented at a public hearing in accordance with §357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(18) 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).

(19) 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.

(20) Regional water planning area (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(21) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(22) 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."

(23) 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).

(24) 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).

(25) 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).

(26) Water conservation measures--Practices, techniques, and technologies that will reduce the consumption of water, reduce the loss of waste or water, or improve the efficiency in the use of water that may be presented as water management strategies.

(27) 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 more than 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.

(28) Water Management Strategy--A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands.

(29) Water User Group (WUG)--Identified user or group of users for which water demands and water supplies have been identified and analyzed and plans developed to meet water needs. These include:

(A) Incorporated Census places of a population greater than 500, including select Census Designated Places, such as significant military bases or cases in which the Census Designated Place is the only Census place in the county;

(B) Retail public utilities providing more than 280 acre-feet per year for municipal use;

(C) Collective Reporting Units, or groups of retail public utilities that have a common association;

(D) Municipal and domestic water use, referred to as county-other, not included in subparagraphs (A) - (C) of this paragraph; and

(E) Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a

county in a RWPA.

(30) Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan. The regional water planning groups shall include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan.

Source Note: The provisions of this §357.10 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.11

Designations

(a) The Board shall review and update the designations of RWPAs as necessary but at least every five years, on its own initiative or upon recommendation of the executive administrator. The Board shall provide 30 days notice of its intent to amend the designations of RWPAs 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 RWPAs 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 RWPAs 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 a RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which regional water plans 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 regional water planning areas;
- (5) Political subdivision boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a regional water planning group 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 executive administrator 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 executive
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administrator. 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 regional water plans 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 a 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 100 employees or less than \$1 million in gross annual receipts;
- (8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;
- (9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;
- (10) Water districts, defined as any districts or authorities, created under authority of

either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within a 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; and

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

(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 a 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.

Source Note: The provisions of this §357.11 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §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 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;

(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) A RWPG shall hold a public meeting to determine the process for identifying potentially feasible water management strategies; 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 water management strategies that are potentially feasible for meeting a need in the region. The public meeting under this subsection shall be in accordance with the requirements of §357.21(b) of this title.

(c) If applicable, and approved by the EA, implement simplified planning in accordance with guidance to be provided by the EA. If a RWPG determines in its analysis of water needs that it has sufficient supplies in the RWPA to meet water needs for the 50-year planning period, RWPGs may conduct simplified regional water planning as follows:

(1) identify water supplies that are available for voluntary redistribution in a RWPA or to other RWPA's;

(2) where appropriate, adopt previous RWP or state water plan information, updated as necessary, as the RWP; and

(3) other activities upon approval of the EA necessary to complete a RWP that meets rule and statute requirements.

Source Note: The provisions of this §357.12 adopted to be effective August 12, 2012,

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SUBCHAPTER B
GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

RULE §357.20**Guidance Principles for State and Regional Water Planning**

Development of the state water plan and of RWPs shall be guided by the principles stated in §358.3 of this title (relating to Guidance Principles).

Source Note: The provisions of this §357.20 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.21**Notice and Public Participation**

(a) RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551, with a copy of all materials presented or discussed 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.

(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; process of identifying potentially feasible water management strategies; meetings to replace RWPG members or addition of new RWPG members; and adoption of regional water plans.

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity; and

(C) each County Clerk, in writing, within the RWPA.

(5) Notice and agenda to be posted:

(A) On the website of the host political subdivision or on the Board website if

requested by the RWPG; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and water demand projection revision requests to officially adopted Board projections; substitution of alternative water management strategies; and minor amendments to RWPs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet, emailed, and mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

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

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice of RWPG activities either in writing or email, as requested by the person or entity;

(C) each County Clerk, in writing, within the RWPA; and

(D) each County Clerk in counties outside the RWPA where a recommended or alternative water management strategy being considered would be located.

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the host political subdivision or on the Board website if requested by the RWPG; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting; and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by

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the RWPG.

(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; holding hearings for IPPs; and requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA as follows:

(A) before the 30th day preceding the date of the public meeting or hearing; and

(B) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

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

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (8)(A) of this subsection.

(4) If applying for Board funding, the notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the regional water planning area; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(5) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on an electronic disc or drive, 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.

(6) Notice shall be mailed to, at a minimum, the following:

(A) Notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) Each mayor of a municipality 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;

(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;

(E) Additionally, for public hearings or meetings to obtain input on development of a future RWP or a meeting or hearing associated with IPPs or major RWP amendments:

(i) 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

(ii) 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; and

(F) Additionally, a RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs.

(7) Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the host political subdivision or on the Board website if requested by the RWPG;

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

(8) Public comments to be accepted as follows:

(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to a RWP.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when adopting a RWP or adopting a major amendment to a RWP.

(ii) Comments associated with a preplanning meeting, scope of work development, and an application for funding to the Board must be considered prior to taking RWPG action.

Source Note: The provisions of this §357.21 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §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 regional water plan. 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; and
- (13) 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, 357.44, 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 eleven separate chapters.

Source Note: The provisions of this §357.22 adopted to be effective August 12, 2012, 37 TexReg 5797

SUBCHAPTER C**PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMENDATIONS****RULE §357.30****Description of the Regional Water Planning Area**

RWPGs shall describe their regional water planning area including the following:

- (1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;
- (2) current water use and major water demand centers;
- (3) current groundwater, surface water, and reuse supplies including major springs that are important for water supply or protection of natural resources;
- (4) wholesale water providers;
- (5) agricultural and natural resources;
- (6) identified water quality problems;
- (7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;
- (8) summary of existing local and regional water plans;
- (9) the identified historic drought(s) of record within the planning area;
- (10) current preparations for drought within the RWPA;
- (11) 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); and
- (12) an identification of each threat to agricultural and natural resources and a discussion of how that threat will be addressed or affected by the water management strategies evaluated in the plan.

Source Note: The provisions of this §357.30 adopted to be effective August 12, 2012,

RULE §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 WWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for each county or portion of a county in the RWPA. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin.

(c) RWPs shall report the current contractual obligations of WUG and WWPs 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.

(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 will determine and 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 will be contained in the next state water plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population or water demand projections if the request demonstrates that population or water demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and water demand projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(c) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from a RWPG for revision of population or water demand projections.

(f) Population and water demand projections shall be presented for each planning

decade for each of the above reporting categories.

Source Note: The provisions of this §357.31 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §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 WUGs and wholesale water suppliers 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) Evaluation of the existing surface water available during drought of record shall be based on firm yield. The analysis may be based on justified operational procedures other than firm yield. The EA shall consider a written request from a RWPG to use procedures other than firm yield. For surface water supply analysis, RWPGs will use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. RWPGs will assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use other 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.

(d) RWPGs shall use modeled available groundwater volumes for groundwater availability, as issued by the Board, 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 date the Board most recently adopted a state water plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent state water plan.

(e) RWPGs shall evaluate the existing water supplies for each WUG and WWP.

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

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

Source Note: The provisions of this §357.32 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §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. Results will be reported for WUGs and for WWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in a RWPA.
- (c) The social and economic impacts of not meeting water needs will be evaluated by RWPGs and reported for each RWPA.
- (d) Results of evaluations will be reported by WUG in accordance with §357.31(a) of this title and WWPs in accordance with §357.31(b) of this title.
- (e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation water management strategies or direct reuse water management strategies are recommended. This secondary water needs analysis will calculate the water needs that would remain after assuming all recommended conservation and direct reuse water management strategies are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and WWP and decade.

Source Note: The provisions of this §357.33 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.34**Identification and Evaluation of Potentially Feasible Water Management Strategies**

- (a) RWPGs shall identify and evaluate potentially feasible water management strategies for all WUGs and WWPs with identified water needs.
- (b) RWPGs shall identify potentially feasible water management strategies 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 WWPs. The strategies shall meet new water supply obligations necessary to implement recommended water management strategies of WWPs and WUGs. RWPGs shall plan

for water supply during Drought of Record conditions. In developing RWPs, RWPGs shall provide WMSs to be used during a drought of record.

(c) Potentially feasible water management strategies 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, 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) Evaluations of potentially feasible water management strategies shall include the following analyses:

(1) For the purpose of evaluating potentially feasible water management strategies, 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 will consider a written request from a 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 water management strategies 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 calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries,

and arms of the Gulf of Mexico. Evaluations of effects on environmental flows will include consideration of the Commission's adopted environmental flow standards under 30 TAC 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 water management strategies 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 water management strategies 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 water management strategies 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 will 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 water management strategies on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended water management strategies to current conditions using best available data.

(9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in §357.22(a)(3) of this title (relating to General Considerations for Development of Regional Water Plans).

(10) Other factors as deemed relevant by the RWPG including recreational impacts.

(e) RWPGs shall evaluate and present potentially feasible water management strategies 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.

(f) 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 water management strategies. RWPGs shall incorporate water conservation planning and drought contingency planning in the regional water planning area.

(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 a 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 will include a water conservation strategy, pursuant to Texas Water Code §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs will 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 will develop conservation strategies based on this determination. In preparing this evaluation, RWPGs will 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 will 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 will 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).

(g) 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.

Source Note: The provisions of this §357.34 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.35

Recommended and Alternative Water Management Strategies

- (a)** RWPGs shall recommend water management strategies to be used during a drought of record based on the potentially feasible water management strategies evaluated under §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies).
- (b)** RWPGs shall recommend specific water management strategies based upon the identification, analysis, and comparison of water management strategies by the RWPG that the RWPG determines are potentially feasible so that the cost effective water management strategies that are environmentally sensitive are considered and adopted unless a RWPG demonstrates that adoption of such strategies is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs will follow processes described in §357.34 of this title. The RWP may include alternative water management strategies evaluated by the processes described in §357.34 of this title.
- (c)** Strategies will be selected by the RWPGs so that cost effective water management strategies, which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.
- (d)** RWPGs shall identify and recommend water management strategies for all WUGs and WWP with identified water needs and that meet all water needs during the drought of record except in cases where:
- (1) no water management strategy is feasible. In such cases, RWPGs must explain why no management strategies are feasible; or
 - (2) a political subdivision that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.
- (e)** Specific recommendations of water management strategies to meet an identified need will not be shown as meeting a need for a political subdivision if the political subdivision in question objects to inclusion of the strategy for the political subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.
- (f)** Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.
- (g)** RWPGs shall report the following:
- (1) Recommended water management strategies and the associated results of all the
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potentially feasible water management strategy evaluations by WUG and WWP. If a WUG or WWP lies in one or more counties or RWPAs or river basins, data will be reported for each river basin, RWPA, and county.

(2) Calculated planning management supply factors for each WUG and WWP included in the RWP assuming all recommended water management strategies are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended water management strategies for each entity; divided by that entity's total projected water demand, within the planning decade. The resulting calculated safety factor shall be presented in the plan by entity and decade for every WUG and WWP.

(3) Fully evaluated Alternative Water Management Strategies included in the adopted RWP shall be presented together in one place in the RWP.

Source Note: The provisions of this §357.35 adopted to be effective August 12, 2012, 37 TexReg 5797

SUBCHAPTER D

IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

RULE §357.40

Impacts of Regional Water Plan

(a) RWPs shall include a quantitative description of the socioeconomic impacts of not meeting the identified water needs pursuant to §357.33(c) of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands).

(b) RWPs shall include a description of the impacts of the RWP regarding:

(1) Agricultural resources pursuant to §357.34(d)(3)(C) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(2) Other water resources of the state including other water management strategies and groundwater and surface water interrelationships pursuant to §357.34(d)(4) of this title;

(3) Threats to agricultural and natural resources identified pursuant to §357.34(d)(5) of this title;

(4) 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 pursuant to §357.34(d)(7) of this title;

(5) Major impacts of recommended water management strategies on key parameters of water quality pursuant to §357.34(d)(8) of this title; and

(6) Effects on navigation.

(c) RWPs shall include a summary of the identified water needs that remain unmet by the RWP.

Source Note: The provisions of this §357.40 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.41

Consistency with Long-Term Protection of Water Resources, Agricultural Resources, and Natural Resources

RWPGs shall describe how RWPs are consistent with the long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles in §358.3(4) and (8) of this title (relating to Guidance Principles).

Source Note: The provisions of this §357.41 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.42

Drought Response Information, Activities, and Recommendations

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, drought of record conditions based on the following subsections.

(b) RWPGs shall conduct an overall assessment of current preparations for drought within the RWPA including a description of how water suppliers in the RWPA identify and respond to the onset of drought. This may include information from local drought contingency plans.

(c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with §357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing drought contingency plans.

(d) RWPGs will collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. In accordance with Texas Water Code §16.053(r), this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs will 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 water management strategies;

(2) List and description of alternative drought management water management strategies 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 water management strategies;

(3) List of all potentially feasible drought management water management strategies that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended drought management measures, if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWPs in the event that the existing water supply sources become temporarily unavailable to the WUGs and WWPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and

(3) all county-other WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought

Preparedness Council.

(i) RWPGs shall make drought preparation and response recommendations regarding:

- (1) Development of, content contained within, and implementation of local drought contingency plans required by the Commission;
- (2) Current drought management preparations in the RWPA including:
 - (A) drought response triggers; and
 - (B) responses to drought conditions;
- (3) The Drought Preparedness Council and the State Drought Preparedness Plan; and
- (4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model drought contingency plans.

Source Note: The provisions of this §357.42 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.43

Regulatory, Administrative, or Legislative Recommendations

(a) The RWPs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) **Ecologically Unique River and Stream Segments.** RWPGs may include in adopted RWPs recommendations for all or parts of river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) A RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in §358.2 of this title (relating to Definitions).

(2) For every river and stream segment that has been designated as a unique river or stream segment by the legislature, during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended water management strategies. The

assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.

(c) Unique Sites for Reservoir Construction. A RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at §358.2 of this title shall be used to determine if a site is unique for reservoir construction.

(d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions.

(e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.

(f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

Source Note: The provisions of this §357.43 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.44

Infrastructure Financing Analysis

RWPGs shall assess and quantitatively report on how individual local governments, regional authorities, and other political subdivisions in their RWPA propose to finance recommended water management strategies.

Source Note: The provisions of this §357.44 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.45

Implementation and Comparison to Previous Regional Water Plan

(a) RWPGs shall describe the level of implementation of previously recommended water management strategies. Information on the progress of implementation of all water management strategies that were recommended in the previous RWP, including conservation and drought management water management strategies; and the implementation of projects that have affected progress in meeting the state's future water needs.

(b) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

- (1) Water demand projections;

- (2) Drought of record and hydrologic and modeling assumptions used in planning for the region;
- (3) Groundwater and surface water availability, existing water supplies, and identified water needs for WUGs and WWP; and
- (4) Recommended and alternative water management strategies.

Source Note: The provisions of this §357.45 adopted to be effective August 12, 2012, 37 TexReg 5797

SUBCHAPTER E

ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

RULE §357.50

Adoption, Submittal, and Approval of Regional Water Plans

- (a)** The RWPGs shall submit their adopted RWP to the Board every five years on a date to be disseminated by the EA, as modified by subsection (e)(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.
- (c)** The RWPGs shall distribute the IPP in accordance with §357.21(d)(5) of this title (relating to Notice and Public Participation).
- (d)** The RWPGs shall solicit, and consider the following comments when adopting a RWP:
 - (1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;
 - (2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and
 - (3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.
- (e)** Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and
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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; and

(C) Summaries of all written and oral comments received pursuant to subsection (d) 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 (d) of this section.

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

(A) Initially prepared plans 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 the data, metadata and all other relevant digital information supporting the plan to the Board's planning database system. All changes and corrections to this information must be entered into the Board's database prior to submittal of an adopted plan.

(C) The RWPG will 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 will be made available on the Board website.

(f) The RWPGs shall submit in a timely manner to the EA information on any known interregional conflict between RWPs.

(g) The RWPGs shall modify the RWP to incorporate Board resolutions of interregional

conflicts.

(h) The RWPGs shall seek to resolve conflicts with other RWPGs and shall participate in any Board sponsored efforts to resolve interregional conflicts.

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

(j) Upon receipt of a RWP adopted by the RWPG, the Board will consider approval of such plan based on the following criteria:

(1) The Board shall verify adoption of the RWP by the RWPG.

(2) The Board shall approve the plan only after it considers any information from RWPGs of the existence of an interregional conflict and finds that no interregional conflict exists. The Board shall not consider approval of a RWP unless all RWPGs which could contain conflicts have also been submitted to the Board for approval, or the Board determines that such plans are not likely to be submitted.

(k) Board Adoption of State Water Plan. RWPGs 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).

Source Note: The provisions of this §357.50 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.51

Amendments to Regional Water Plans

(a) Local Water Planning Amendment Requests. A political subdivision in the RWPA may request a RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. A 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 will 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, the EA will present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA will 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.

(b) Major Amendments to RWPs and State Water Plan. A RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(d) 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. A 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 a RWPG amend its adopted RWP. A 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 as defined in §357.21(d) of this title. The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in §357.21(d) of this title.

(3) The proposed major amendment:

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

(B) Shall not produce unmet needs new to the adopted RWP; and

(C) 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 held in accordance with §357.21(b) of this title following the 30-day public comment period held in accordance with §357.21(d) of this title. 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) Minor Amendment to RWP. A 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 have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;
- (D) does not have a significant substantive impact on water planning or previously adopted management strategies; and
- (E) 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(c) 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.

(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 a 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, a 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 water management strategies in the RWP.

(e) Substitution of Alternative Water Management Strategies. After notice is provided in accordance with §357.21(c) of this title, 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 water management strategy is capable of meeting the same water need. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

(f) Amending the State Water Plan. Following amendments of RWPs, including substitutions of alternative water management strategies, the Board shall make any necessary amendments to the state water plan as outlined in §358.4 of this title (relating to Guidelines).

Source Note: The provisions of this §357.51 adopted to be effective August 12, 2012, 37 TexReg 5797

SUBCHAPTER F
CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

RULE §357.60
Consistency of Regional Water Plans

(a) RWPGs shall submit to the development Board a RWP that is consistent with the guidance principles and guidelines outlined in §357.20 of this title (relating to Guidance Principles for State and Regional Water Planning). Information provided shall be based on data provided or approved by the Board in a format consistent with the guidelines of Subchapters C and D of this chapter and guidance by the EA.

(b) For the purposes of the Texas Water Code §16.053(j) (relating to Board Financial Assistance) projects proposed to the Board for funding will be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:

(1) Is an enhancement of a current water supply identified in the analysis developed under §357.32 of this title (relating to Water Supply Analysis) as meeting a demand, even though the project is not specifically recommended in the RWP;

(2) Involves a minor modification to an existing surface water right that is not in conflict with the RWP; and

(3) Is meeting a need in a manner consistent with the plan developed under Subchapters C and D of this chapter.

(4) For the purposes of the Texas Water Code §16.053(j), projects proposed to the Board for funding to meet any need identified in an approved RWP for which there is not a recommended water management strategy in such plan will be considered by the Board not to be consistent with the approved RWP.

(5) For the purposes of the Texas Water Code §16.053(k) (relating to Board Waivers), the Board may consider, among other factors, changed conditions if a political subdivision requests a waiver of the Texas Water Code §16.053(j) for a project proposed to the Board for funding to meet a need in a manner that is not consistent with the manner the need is addressed in an approved RWP. The Board shall request the members of any affected RWPG to provide input on the request for waiver of the Texas Water Code §16.053(j).

(c) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. RWPGs shall
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consider and use as a guide the state water plan and local water plans provided for in the Texas Water Code §16.054 (relating to Local Water Planning).

Source Note: The provisions of this §357.60 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.61

Intraregional Conflicts in Development of Regional Water Plans

The EA shall provide technical assistance within available resources to the RWPGs requesting such assistance in performing regional water planning activities and if requested, may facilitate resolution of conflicts within RWPA's.

Source Note: The provisions of this §357.61 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.62

Interregional Conflicts

(a) In the event the Board finds that an interregional conflict exists between adopted RWPA's, the EA may use the following process:

- (1) notify the affected RWPGs of the nature of the interregional conflict;
- (2) request affected RWPGs assistance in resolving the conflict; and
- (3) 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 RWPA's 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(d) of this title (relating to Notice and Public Participation) in the RWPA's proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPA's 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.

Source Note: The provisions of this §357.62 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.63

Failure of a Regional Water Plan to Meet Regional Water Planning Requirements

(a) In the event the Board finds that the RWP does not meet the requirements of the Texas Water Code §16.053, this chapter, and Chapter 358 of this title (relating to State Water Planning Guidelines), the Board shall direct the RWPG to make changes necessary for compliance with legal requirements.

(b) In the event the Board directs the RWPG to make changes to its RWP, the RWPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

Source Note: The provisions of this §357.63 adopted to be effective August 12, 2012, 37 TexReg 5797

RULE §357.64

Conflicts Between Regional Water Plans and Groundwater Management Plans

(a) A groundwater conservation district may file a written petition with the EA stating that a potential conflict exists between the district's approved management plan developed under Texas Water Code §36.1071 (relating to Management Plans) and the approved state water plan. A copy of the petition shall be provided to the affected RWPG. The petition must state:

- (1) the specific nature of the conflict;
- (2) the specific sections and provisions of the approved management plan and approved state water plan that are in conflict; and
- (3) the proposed resolution to the conflict.

(b) If the EA determines a conflict exists, the EA will provide technical assistance to and coordinate with the groundwater conservation district and the affected RWPG to resolve the conflict. Coordination may include any of the following processes:

- (1) requiring the RWPG to respond to the petition in writing;
- (2) meeting with representatives from the groundwater conservation district and the RWPG to informally mediate the conflict; and/or

(3) coordinating a formal mediation session between representatives of the groundwater conservation district and the RWPG.

(c) If the parties do not reach resolution, the EA will recommend a resolution to the conflict to the Board within 60 days of the date the mediation is completed. Notice shall be provided at least 15 days prior to the date of the Board meeting to discuss the proposed resolution. The Board may:

- (1) revise an approved RWP; and
- (2) revise a district's approved management plan.

(d) If the Board requires a revision to the groundwater conservation district's approved management plan, the Board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the Board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and Board comments, prepare, revise, and adopt its plan, and submit the revised plan to the Board pursuant to Chapter 356 of this title (relating to Groundwater Management). If the groundwater conservation district disagrees with the decision of the Board, the district may appeal the decision to a district court in Travis County, Texas.

(e) If the Board requires a revision to the approved RWP, the Board shall provide information to the RWPG on what revisions are required and why. The RWPG shall prepare the revisions as a major amendment to their approved RWP pursuant to §357.51(b) of this title.

(f) At the Board's discretion, the Board shall include in the state water plan a discussion of the conflict and its resolution.

Source Note: The provisions of this §357.64 adopted to be effective August 12, 2012, 37 TexReg 5797

CHAPTER 358 STATE WATER PLANNING GUIDELINES**SUBCHAPTER A** STATE WATER PLAN DEVELOPMENT

RULE §358.1**Applicability**

This subchapter governs the Board's preparation, development, formulation, and adoption of the state water plan.

RULE §358.2**Definitions**

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

- (1) Board--The Texas Water Development Board.
- (2) Commission--The Texas Commission on Environmental Quality.
- (3) 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 Chapter 357 of this title (relating to Regional Water Planning).
- (4) Regional water planning area--Area designated pursuant to Texas Water Code §16.053 and Chapter 357 of this title.
- (5) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code §16.053 and Chapter 357 of this title.
- (6) River and stream segments of unique ecological value--Those river or stream segments that may be identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan based on the following criteria:
 - (A) Biological function--stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;
 - (B) Hydrologic function--stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;

(C) Riparian conservation areas--stream segments which are fringed by significant areas in public ownership including state and federal refuges, wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas managed for conservation purposes under a governmentally approved conservation plan;

(D) High water quality/exceptional aquatic life/high aesthetic value--stream segments and spring resources that are significant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or

(E) Threatened or endangered species/unique communities--sites along stream where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species; and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.

(7) Site of unique value for construction of reservoirs--Those sites identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan where:

(A) Site-specific reservoir development is recommended as a specific water management strategy or as a unique reservoir site in an adopted regional water plan; or

(B) The location, hydrologic, geologic, topographic, water availability, water quality, environmental, cultural, and current development characteristics, or other pertinent factors make the site uniquely suited for reservoir development to provide water supply for:

(i) The current planning period; or

(ii) Where it might reasonably be needed to meet needs beyond the 50-year planning period.

(8) 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).

(9) 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).

(10) State water plan--The most recent comprehensive statewide water plan adopted by the Board under Texas Water Code §16.051 (relating to State Water Plan).

(11) Water management strategy--A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply.

RULE §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.

(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 regional water planning area.

(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 or water management strategies 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 regional water plan determines to be potentially feasible when developing plans to meet future water needs and to respond to drought so that cost effective water management strategies 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) Coordination of water planning and management activities of RWPGs to identify common needs and issues and achieve efficient use of water supplies, including the Board and other relevant RWPGs, working together to identify common needs, issues, and challenges while working together to resolve conflicts in a fair, equitable, and efficient manner.

(21) The water management strategies identified in approved RWP 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 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 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(d)(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(d)(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.

RULE §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 water demands which shall

include methods for projecting future population and water demands for municipal and associated commercial and institutional uses, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;

(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 watering;

(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 that were recommended in the previous state water plan and projects funded by the Board; and

(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.

CHAPTER 355 RESEARCH AND PLANNING FUND
SUBCHAPTER C REGIONAL WATER PLANNING GRANTS

RULE §355.90

Applicability and Definitions

(a) This subchapter applies to grant funds for the development and revision of regional water plans.

(b) The following words and acronyms, used in this subchapter, have the following meanings:

(1) Board--The Texas Water Development Board.

(2) Commission--The Texas Commission on Environmental Quality.

(3) Eligible applicant--A political subdivision designated by the regional water planning group and authorized to receive funds for developing or revising regional water plans.

(4) Executive administrator (EA)--The executive administrator of the Board or a designated representative.

(5) Political subdivision--A 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).

(6) Regional water plan--A plan or an amendment to an adopted regional water plan developed by a regional water planning group for a regional water planning area pursuant to the Texas Water Code §16.053 (relating to Regional Water Plans).

(7) Regional water planning area--A geographical area designated and defined by the Board pursuant to the Texas Water Code §16.053.

(8) Regional water planning group (RWPG)--A group designated by the Board that develops a regional water plan, pursuant to the Texas Water Code §16.053.

(9) State environmental planning criteria--Criteria adopted by the Board for inclusion in the state water plan; the criteria are developed through coordination with the Commission and the Texas Parks and Wildlife Department and are used for evaluating the feasibility of water management strategies in a regional water plan when the RWPG lacks information from site specific studies. The environmental planning criteria are listed in Chapter 357 of this title (relating to Regional Water Planning) and also include the Commission's environmental flows standards at 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water).

(10) State population and demand projections--Population and water demand projections contained in the state water plan or adopted by the Board after consultation with the Commission, the Texas Department of Agriculture, the Texas Parks and Wildlife Department, and RWPGs in preparation for revision of the state water plan.

(11) 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).

RULE §355.91

Notice of Funds and Submission and Review of Applications

(a) The EA will publish notice in the *Texas Register* advising RWPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop a scope of work or to develop or revise regional water plans. The notice will describe the form and manner for applications. A RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted by-laws.

(b) The RWPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RWPG. The RWPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement and enter into the contracts necessary for regional planning.

(c) The RWPG shall provide notice that an application for funding is being submitted in accordance with §357.21(d) of this title (relating to Notice and Public Participation).

(d) The EA may request clarification from the RWPG if necessary to evaluate the application. Incomplete applications may be rejected and returned to the applicant. After the initial round of planning grant funds, an eligible applicant may submit additional applications for tasks not previously funded. The EA may fund additional applications under this subchapter, but is not required to provide such additional funding.

(e) The applications shall be evaluated by the following criteria:

- (1) degree to which proposed planning does not duplicate previous or ongoing planning;
- (2) project organization and budget;
- (3) scope of work of project;
- (4) eligibility of tasks for funding under this subchapter;
- (5) the relative need of the political subdivision for the money based upon an assessment of the necessary scope of work and cost to develop the regional water plan as compared to statewide needs for development of all regional water plans;
- (6) the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and
- (7) the degree to which regional water planning by the political subdivision will address the water supply needs in the regional water planning area.

RULE §355.92**Use of Funds**

(a) Limitations of Funding. The Board has sole discretion in determining which activities are necessary for the development or revision of regional water plans. However, no funds will be provided for the following:

(1) activities for which the Board determines existing information or data is sufficient for the planning effort including:

(A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;

(B) evaluations of groundwater resources for which a desired future condition has been submitted to the Board pursuant to Texas Water Code §36.108(d) (relating to Joint Planning in a Management Area);

(C) evaluations of groundwater resources for which current information is available from the Board or other entity sufficient for evaluation of the resource;

(D) determination of water savings resulting from standard conservation practices for which current information is available from the Board;

(E) revision of the adopted state population and demand projections;

(F) revision of state environmental planning criteria for new surface water supply projects; and

(G) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;

(4) costs associated with administration of the plan's development, including but not limited to:

(A) compensation for the time or expenses of RWPGs members' service on or for the RWPG;

(B) costs of administering the RWPGs;

(C) costs of public notice and meetings, including time and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of reviewing products developed due to this grant; and

(F) costs of administering the regional water planning grant and associated contracts; and

(5) analyses of benefits and costs of water management strategies unless the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies), and the RWPG demonstrates to the satisfaction of the executive administrator that these analyses are needed to determine the selection of the water management strategy.

(b) Funding Administrative Costs. The following administrative costs are eligible for funding if the RWPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act, for RWPG voting members who certify that they are not eligible for reimbursement from their employer; travel expenses are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RWPGs and certified by the chairperson;

(3) direct costs, not including personnel costs, for placing public notices in newspapers for the legally required public hearings and of providing copies of information for the public and for members of the RWPGs as needed for the efficient performance of planning work; and

(4) the cost of postage for mailing notices of public hearings and other actions to persons and entities listed in Chapter 357 of this title (relating to Regional Water Planning).

(c) Subcontracting. A RWPG through the eligible applicant's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

(d) Notwithstanding limitations on funding described in this section, the EA may, in his sole discretion, authorize funding for a cost benefit analysis of water management strategies. The EA shall consider funding such an analysis when the strategies serve the same demand, but the costs and benefits differ significantly among the strategies. The EA shall consider the overarching benefits to the state when determining whether to provide such funding. The EA may provide cost benefit analysis in other situations, as he deems necessary and appropriate.

RULE §355.93**Board Consideration of Applications; Applicant's Responsibilities; and Contract**

(a) The EA shall submit a summary of applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicant and other persons who have provided comments of the time and place of such meeting. The Board agenda is published on the Web site at www.twdb.texas.gov.

(b) Board Review. The Board has discretion to approve, disapprove, amend, or continue consideration of an application. If the Board approves the application, then the eligible applicant will be notified of the amount of funds available and about the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The applicant may request an extension of time for good cause shown prior to the contract execution deadline.

(c) Eligible Applicant's Responsibility. The eligible applicant must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.

(d) A contract for regional planning funds shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) the total amount of money to be paid from the research and planning fund under the contract;
- (3) the time for completion; and
- (4) any other terms and conditions required by the EA or agreed to by the contracting parties.

Texas Water Code
Title 2. Water Administration
Subtitle C. Water Development

Chapter 16
Subchapter C

Sec. 16.051. STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN.

(a) Not later than January 5, 2002, and before the end of each successive five-year period after that date, the board shall prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053. The state water plan shall provide for the orderly development, management, and conservation of water resources and 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.

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

(b) The state water plan, as formally adopted by the board, shall be a guide to state water policy. The commission shall take the plan into consideration in matters coming before it.

(c) The board by rule shall define and designate river basins and watersheds.

(d) The board, in coordination with the commission, the Department of Agriculture, and the Parks and Wildlife Department, shall adopt by rule guidance principles for the state water plan which reflect the public interest of the entire state. When adopting guidance principles, due 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. The board shall review and update the guidance principles, with input from the commission, the Department of Agriculture, and the Parks and Wildlife Department, as necessary but at least every five years to coincide with the five-year cycle for adoption of a new water plan as described in Subsection (a).

(e) On adoption the board shall deliver the state water plan to the governor, the lieutenant governor, and the speaker of the house of representatives and present the plan for review to the appropriate legislative committees. The plan shall include legislative recommendations that the board believes are needed and

desirable to facilitate more voluntary water transfers. The plan shall identify river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the board recommends for protection under this section.

(f) The legislature may designate a river or stream segment of unique ecological value. This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment designated by the legislature under this subsection.

(g) The legislature may designate a site of unique value for the construction of a reservoir. A state agency or political subdivision of the state may not obtain a fee title or an easement that would significantly prevent the construction of a reservoir on a site designated by the legislature under this subsection.

(g-1) Notwithstanding any other provisions of law, a site is considered to be a designated site of unique value for the construction of a reservoir if the site is recommended for designation in the 2007 state water plan adopted by the board and in effect on May 1, 2007. The designation of a unique reservoir site under this subsection terminates on September 1, 2015, unless there is an affirmative vote by a proposed project sponsor to make expenditures necessary in order to construct or file applications for permits required in connection with the construction of the reservoir under federal or state law.

(h) The board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsection (f) or (g) may bring a cause of action to remedy or prevent the violation. A cause of action brought under this subsection must be filed in a district court in Travis County or in the county in which the action is proposed or occurring.

(i) For purposes of this section, the acquisition of fee title or an easement by a political subdivision for the purpose of providing retail public utility service to property in the reservoir site or allowing an owner of property in the reservoir site to improve or develop the property may not be considered a significant impairment that prevents the construction of a reservoir site under Subsection (g). A fee title or easement acquired under this subsection may not be considered the basis for preventing the future acquisition of land needed to construct a reservoir on a designated site.

Sec. 16.053. REGIONAL WATER PLANS.

(a) The regional water planning group in each regional water planning area shall prepare a regional water plan, using an existing state water plan identified in Section 16.051 of this code and local water plans prepared under Section 16.054 of this code as a guide, if present, that provides for the orderly development, management, and conservation of water resources and 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 that particular region.

(b) No later than September 1, 1998, the board shall designate the areas for which regional water plans shall be developed, taking into consideration such factors as river basin and aquifer delineations, water utility development patterns, socioeconomic characteristics, existing regional water planning areas, political subdivision boundaries, public comment, and other factors the board deems relevant. The board shall review and update the designations as necessary but at least every five years.

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section 36.001, located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.

(d) The board shall provide guidelines for the consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans.

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(l) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality; and

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands.

(e-1) On request of the Texas Water Advisory Council, a regional planning group shall provide the council a copy of that planning group's regional water plan.

(f) No later than September 1, 1998, the board shall adopt rules:

(1) to provide for the procedures for adoption of regional water plans by regional water planning groups and for approval of regional water plans by the board; and

(2) to govern procedures to be followed in carrying out the responsibilities of this section.

(g) The board shall provide technical and financial assistance to the regional water planning groups in the development of their plans. The board shall simplify, as much as possible, planning requirements in regions with abundant water resources. The board, if requested, may facilitate resolution of conflicts within regions.

(h)(1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location within the regional planning area to gather suggestions and recommendations from the public as to issues that should be addressed in the plan or provisions that should be considered for inclusion in the plan.

(2) The regional water planning group shall provide an ongoing opportunity for public input during the preparation of the regional water plan.

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one

public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

(4) After the regional water plan is initially prepared, the regional water planning group shall submit a copy of the plan to the board. The board shall submit comments on the regional water plan as to whether the plan meets the requirements of Subsection (e) of this section.

(5) If no interregional conflicts exist, the regional water planning group shall consider all public and board comments; prepare, revise, and adopt the final plan; and submit the adopted plan to the board for approval and inclusion in the state water plan.

(6) If an interregional conflict exists, the board shall facilitate coordination between the involved regions to resolve the conflict. If conflict remains, the board shall resolve the conflict. On resolution of the conflict, the involved regional water planning groups shall prepare revisions to their respective plans and hold, after notice, at least one public hearing at some central location within their respective regional water planning areas. The regional water planning groups shall consider all public and board comments; prepare, revise, and adopt their respective plans; and submit their plans to the board for approval and inclusion in the state water plan.

(7) The board may approve a regional water plan only after it has determined that:

(A) all interregional conflicts involving that regional water planning area have been resolved;

(B) the plan includes water conservation practices and drought management measures incorporating, at a minimum, the provisions of Sections 11.1271 and 11.1272; and

(C) the plan is consistent with long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles adopted under Section 16.051(d).

(8) Notice required by Subdivision (1), (3), or (6) of this subsection must be:

(A) published once in a newspaper of general circulation in each county located in whole or in part in the regional water planning area before the 30th day preceding the date of the public meeting or hearing; and

(B) mailed to:

(i) each mayor of a municipality with a population of 1,000 or more that is located in whole or in part in the regional water planning area;

(ii) each county judge of a county located in whole or in part in the regional water planning area;

(iii) each special or general law district or river authority with responsibility to manage or supply water in the regional water planning area;

(iv) each retail public utility that:

water planning area; or

(a) serves any part of the regional regional water planning area; and

(b) receives water from the

(v) each holder of record of a permit, certified filing, or certificate of adjudication for the use of surface water the diversion of which occurs in the regional water planning area.

(9) Notice published or mailed under Subdivision (8) of this subsection must contain:

(A) the date, time, and location of the public meeting or hearing;

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

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information on how the public may submit comments.

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

(11) This subdivision applies only to an amendment to a regional water plan approved by the board. This subdivision does not apply to the adoption of a subsequent regional water plan for submission to the board as required by Subsection (i). Notwithstanding Subdivision (10), the regional water planning group may amend the plan in the manner provided by this subdivision if the executive administrator makes a written determination that the proposed amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. A proposed amendment qualifies for adoption in the manner provided by this subdivision only if the amendment is a minor amendment, as defined by board rules, that will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. If the executive administrator determines that a proposed amendment qualifies for adoption in the manner provided by this subdivision, the regional water planning group may adopt the amendment at a public meeting held in accordance with Chapter 551, Government Code. The proposed amendment must be placed on the agenda for the meeting, and notice of the meeting must be given in the manner provided by Chapter 551, Government Code, at least two weeks before the date the meeting is held. The public must be provided an opportunity to comment on the proposed amendment at the meeting.

(i) The regional water planning groups shall submit their adopted regional water plans to the board by January 5, 2001, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning

group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region. Subsequent regional water plans shall be submitted at least every five years thereafter. Public participation for revised regional plans shall follow the procedures under Subsection (h).

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, J, O, Q, and R, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan;

(2) beginning January 5, 2002, the board:

(A) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and

(B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan; and

(3) the board finds that the water audit required under Section 16.0121 has been completed and filed.

(k) The board may waive the requirements of Subsection (j) of this section if the board determines that conditions warrant the waiver.

(l) A political subdivision may contract with a regional water planning group to assist the regional water planning group in developing or revising a regional water plan.

(m) A cause of action does not accrue against a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) for an act or omission in the course and scope of the person's work relating to the regional water planning group.

(n) A regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) is not liable for damages that may arise from an act or omission in the course and scope of the person's work relating to the regional water planning group.

(o) The attorney general, on request, shall represent a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) in a suit arising from an act or omission relating to the regional water planning group.

(p) If a groundwater conservation district files a petition with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section 36.1071 and an approved state water plan, the development board shall provide technical assistance to and facilitate coordination between the district and the involved region to resolve

the conflict. Not later than the 45th day after the date the groundwater conservation district files a petition with the development board, if the conflict has not been resolved, the district and the involved region shall mediate the conflict. The district and the involved region may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved region cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed as provided by Subsections (p-1) and (p-2).

(p-1) If the development board determines that resolution of the conflict requires a revision of an approved regional water plan, the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the development board and shall hold, after notice, at least one public hearing at some central location within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.

(p-2) If the development board determines that resolution of the conflict requires a revision of the district's approved groundwater conservation district management plan, the development board shall provide information to the district. The groundwater district shall prepare any revisions to its plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location within the district. The groundwater district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board.

(p-3) If the groundwater conservation district disagrees with the decision of the development board under Subsection (p), the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

(p-4) On the request of the involved region or groundwater conservation district, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).

(q) Each regional planning group shall examine the financing needed to implement the water management strategies and projects identified in the group's most recent approved regional plan and, not later than June 1, 2002, shall report to the board regarding:

(1) how local governments, regional authorities, and other political subdivisions in the region propose to pay for water infrastructure projects identified in the plan; and

(2) what role the regional planning group proposes for the state in financing projects identified in the plan, giving particular attention to proposed increases in the level of state participation in funding for regional projects to meet needs beyond the reasonable financing capability of local governments, regional authorities, and other political subdivisions involved in building water infrastructure.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1200, Sec. 1

(r) Information described by Subsection (e)(3)(D) that is included in a regional water plan submitted to the board is excepted from required disclosure under the public information law, Chapter 552, Government Code.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1097, Sec. 8 and amended by Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 2.15

(r) The board by rule shall provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan. If an amendment under this subsection is to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001, the rules may allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not:

(1) significantly change the regional water plan, as reasonably determined by the board; or

(2) adversely affect other water management strategies in the regional water plan.

Sec. 16.054. LOCAL WATER PLANNING.

(a) Notwithstanding the provisions of this subsection, groundwater districts are the state's preferred method of managing groundwater resources. It is the policy of the state that water resource management, water conservation, and drought planning should occur on an ongoing basis. The board, commission, and Parks and Wildlife Department shall make available where appropriate technical and financial assistance for such planning. In addition, the Department of Agriculture may provide input and assistance, as appropriate, for local water planning.

(b) Local plans may be submitted to the appropriate regional water planning group for the area as follows:

(1) holders of existing permits, certified filings, or certificates of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more may submit plans required by Section 11.1271 of this code;

(2) retail and wholesale public water suppliers and irrigation districts may submit plans required by Section 11.1272 of this code;

(3) groundwater districts may submit management plans certified under Section 36.1072 of this code; and

(4) special districts may submit conservation or management plans required by general or special law.

(c) When preparing a plan to be submitted under this section, a person shall consider the implementation of a desalination program if practicable.

(d) The regional water planning group shall consider any plan submitted under this section when preparing the regional water plan under Section 16.053 of this code. A political subdivision, including a groundwater conservation district, in the regional water planning area may request a regional water planning group to consider specific changes to a regional water plan based on changed conditions or new information. The regional water planning group shall consider the request and shall amend its regional water plan if it determines that an amendment is warranted. If the entity requesting the change is dissatisfied with the decision of the regional planning group, the entity may request that the board review the decision and consider changing the state-approved regional plan.

(e) After January 5, 2002, when preparing individual water plans that address drought or the development, management, or conservation of water resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the applicable approved regional water plan for their region.

Selected Statute Excerpts Relevant to Regional Water Planning

Texas Water Code:

Chapter 10

Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council shall (6) monitor the implementation of water conservation strategies by water users included in regional water plans

Chapter 11

Sec. 11.002. DEFINITIONS.

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS.

Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a) During a period of drought or other emergency shortage of water, as defined by commission rule, the executive director by order may, in accordance with the priority of water rights established by Section 11.027:

- (1) temporarily suspend the right of any person who holds a water right to use the water; and
- (2) temporarily adjust the diversions of water by water rights holders.

Sec. 11.085. INTERBASIN TRANSFERS. .

Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS.

October 2012

Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS. (a) The commission shall by rule require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

Sec. 11.139. EMERGENCY AUTHORIZATIONS. Relates to an emergency affecting public health and safety

Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND INSTREAM USES. Applicable to permits to store, take or divert water

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS

Chapter 13

Sec. 13.146. WATER CONSERVATION PLAN. Applicable to retail public utility as defined in 13.002, that provides potable water to 3,300 or more connections.

Sec. 13.506. PLUMBING FIXTURES. Requires owners of multi-family and multiple use facilities and condominiums to meet standards for fixtures prior to sub metering or allocating water services

Chapter 15

Sec. 15.401. PROGRAM CREATION. The research and planning program is created to provide money for research into and planning of the proper conservation, management, and development of the state's water resources, for regional planning by political subdivisions

Sec. 15.406. REGIONAL FACILITY PLANNING.

Sec. 15.4061. FUNDING FOR REGIONAL WATER PLANS

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING.

Chapter 16

Sec. 16.0121. WATER AUDITS.

Sec. 16.051. STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN.

Sec. 16.053. REGIONAL WATER PLANS

Sec. 16.054. LOCAL WATER PLANNING.

Sec. 16.055. DROUGHT RESPONSE PLAN

Sec. 16.0551. STATE DROUGHT PREPAREDNESS PLAN

Sec. 16.402. WATER CONSERVATION PLAN REVIEW

Sec. 16.403. WATER USE REPORTING.

Chapter 36

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS

Sec. 36.1084. MODELED AVAILABLE GROUNDWATER

Miscellaneous:

Texas Open Meeting Act, Tex. Government Code, ch.551

Texas Public Information Act, Tex. Government Code, ch. 552

Texas Professional Services Procurement Act, Tex. Government Code, ch.2254

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Development Board

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