

**TO:** Board Members

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

**FROM:** Temple McKinnon, Director, Water Use, Projections & Planning

**DATE:** March 7, 2018

**SUBJECT:** Rulemaking - 31 Texas Administrative Code Chapter 355 relating to Regional Water Planning Grants and 357 relating to Regional Water Planning.

**ACTION REQUESTED**

Consider adopting amendments and new provisions to 31 Texas Administrative Code Chapter 355 relating to Regional Water Planning Grants and 357 relating to Regional Water Planning.

**BACKGROUND**

The Texas Water Development Board (TWDB) authorized publication of proposed amendments to 31 Texas Administrative Code (TAC) Chapters 355 and 357 on December 7, 2017. The proposed amendments were published in the *Texas Register* on December 22, 2017, with a deadline to receive public comments by January 31, 2018.

No comments were received on proposed amendments to Chapter 355. The TWDB received comments from the Central Texas Water Coalition and Freese and Nichols, Inc. on proposed amendments to Chapter 357. By statute, the Board is required to respond to timely submitted comments and, if warranted, modify the proposed rules. The Executive Administrator has determined that one change was warranted to Chapter 357 as a result of the public comments. The adoption preamble includes the Board’s response to comments and changes in the final language considered for adoption are outlined below as key issues.

**KEY ISSUES**

The amendments and new provisions will implement legislative changes to the Texas Water Code contained in House Bill 2215 and Senate Bills 347 and 1511 from the 85<sup>th</sup> (R) Legislative Session; address certain stakeholder concerns; and clarify rules to make them more understandable. These amendments affect the state’s regional water planning process and its associated funding application process and expense eligibilities.

<p><b>Our Mission</b></p> <p>To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas</p>	<p><b>Board Members</b></p> <p>Peter Lake, Chairman   Kathleen Jackson, Board Member   Brooke T. Paup, Board Member</p> <p>Jeff Walker, Executive Administrator</p>
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Several comments received are addressed by existing guidance previously developed by TWDB and links to this guidance are provided in the response to comment. In response to comments, a change was made in the final rule language of 31 TAC 357.12(d) elaborating that regional water planning groups that are not declaring an intent to pursue simplified planning may proceed, without any additional approvals, with the development of their initially prepared plan following submittal of the Technical Memorandum. Final rule language of 31 TAC 357.12(d) was also revised to allow for a regional water planning group to rescind their declaration of simplified planning following written approval from the Executive Administrator but prior to amending the contract scope of work and budget with the TWDB.

All comments received, and the responses, are summarized in the attachments to this memo as part of the rule adoption package.

**RECOMMENDATION**

The Executive Administrator recommends approval of this item in order to implement legislative requirements from the 85<sup>th</sup> (R) Legislative Session.

- Attachments:**
1. Adoption of amendments for publication in the *Texas Register* – Chapter 355.
  2. Adoption of new rules and amendments for publication in the *Texas Register* - Chapter 357.

TITLE 31. NATURAL RESOURCES AND CONSERVATION  
 PART 10. TEXAS WATER DEVELOPMENT BOARD  
 CHAPTER 355. RESEARCH AND PLANNING FUND

The Texas Water Development Board ("TWDB" or "board") adopts amendments to §355.91 relating to regional water planning grant notice of funds and submission and review of applications and §355.92 relating to use of funds, without changes to the text as published in the December 22, 2017, issue of the *Texas Register* (42 TexReg 7290).

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

The purpose of the amendments is to correct an administrative rule reference related to a previous rule revision, clarify the roles of the regional water planning group and its designated political subdivision during the funding application process, and to revise eligibility requirements for travel expenses associated with regional water planning. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE ADOPTED AMENDMENTS.

*Subchapter C. Regional Water Planning Grants.*

*Section 355.91. Notice of Funds and Submission and Review of Applications.*

In Section 355.91, Subsection 355.91(c) is amended to clarify the role of who is providing notice from the regional water planning group (RWPG) to the RWPG's designated political subdivision and correct a reference to notice requirements from 31 Texas Administrative Code §357.21(d) to the correct reference of §357.21(e).

Subsection 355.91(d) is amended to clarify the role of who is providing information on the funding application from the RWPG to the RWPG's designated political subdivision.

Subsection 355.91(e)(7) is amended to clarify the role of who conducts the planning effort from the RWPG's designated political subdivision to the RWPG.

*Section 355.92. Use of Funds.*

Subsection 355.92(b)(1) is amended to allow eligibility of travel expenses associated with RWPG activities as authorized by the RWPG and Executive Administrator and by the General Appropriations Act.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to correct a reference regarding the TWDB's rules related to regional water planning grant funding.

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between

the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§6.101 and 16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated these rule amendments and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of these amendments is to correct a reference from a previous rulemaking, clarify the roles of the regional water planning group and its designated political subdivision during the funding application process, and to revise eligibility requirements for travel expenses associated with regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these amended rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the amendments do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking requires compliance with state law regarding the state water planning process. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS

The proposed rules were open for public comment, and the comment period ended on January 31, 2018. No comments were received, and no changes to the rules as proposed have been made.

#### STATUTORY AUTHORITY

These amendments are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.053.

The adopted rulemaking affects Chapter 16 of the Texas Water Code.

<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 political subdivision shall provide notice that an application for funding is being submitted in accordance with §357.21(e) of this title (relating to Notice and Public Participation).

(d) The EA may request clarification from the political subdivision 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 RWPG will address the water supply needs in the regional water planning area.

#### §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 are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the RWPG and 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.

TITLE 31. NATURAL RESOURCES AND CONSERVATION  
 PART 10. TEXAS WATER DEVELOPMENT BOARD  
 CHAPTER 357. REGIONAL WATER PLANNING

The Texas Water Development Board (“TWDB” or “board”) adopts amendments to §§357.10, 357.11, 357.21, 357.22, 357.32, 357.44, 357.45, 357.51, 357.62, and 357.64 relating to regional water planning without changes to the text as published in the December 22, 2017, issue of the *Texas Register* (42 TexReg 7290). The board adopts amendments to §357.12, relating to general regional water planning group responsibilities and procedures, with changes from the proposal published in the December 22, 2017, issue of the *Texas Register* (42 TexReg 7290).

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

The purpose of the amendments is to implement legislative changes from Senate Bills 347 and 1511 and House Bill 2215, 85<sup>th</sup> (R) Legislative Session, address stakeholder concerns raised through preliminary input, and clarify rules to make them more understandable. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE ADOPTED AMENDMENTS.

*Subchapter A. General Information.*

*Section 357.10. Definitions and Acronyms.*

The definition of “County-Other” in 31 Texas Administrative Code (TAC) §357.10(7) is amended to correct a reference in the adopted rule.

The definition of “Technical Memorandum” is added as 31 TAC §357.10(33) to establish a document that forms the basis for making a decision regarding implementation of simplified planning as provided for by Senate Bill 1511 (SB 1511), 85<sup>th</sup> (R) Legislative Session (relating to the state and regional water planning process and the funding of projects included in the state water plan).

Subsections 357.10(33) - (42) are subsequently renumbered to 357.10(34) - (43).

*Section 357.11. Designations.*

A new Subsection 357.11(e)(6) is added to implement a change to Texas Water Code (TWC) §16.053(c), made by SB 1511, requiring that a representative of the State Soil and Water Conservation Board serve as an ex-officio member of each RWPG.

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

Subsection 357.12(a)(1) is amended to implement a change to TWC §16.053(h)(1) made by SB 1511. The change requires that the public meeting held prior to the preparation of the regional water plan (RWP) to gather suggestions and recommendations from the public as to issues to address be conducted at a central location that is readily accessible to the public.

A new Subsection 357.12(a-1) is added to implement a change to TWC §16.053(h) made by Senate Bill 347 (SB 347), 85<sup>th</sup> (R) Legislative Session (relating to the applicability of open meetings and public information laws to regional water planning groups and their committees). The change requires that each RWPG and any committee or subcommittee of a RWPG are subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code.



Subsection 357.12(b) is amended to implement a change to TWC §16.053(h)(10) made by SB 1511. The change addresses the legislative requirement that RWPGs amend their plans to exclude water management strategies or projects determined to be infeasible as defined by TWC §16.053(h)(10). The rule revision requires that, beginning with the development of the 2026 RWP, the RWPG present its analysis of infeasible strategies contained in its currently adopted plan in conjunction with the public meeting held to determine its process for identifying potentially feasible water management strategies for their upcoming plan and amend their adopted RWP as appropriate. Additionally, beginning with the development of the 2026 RWP, the notice requirements for this meeting will be those in Subsection 357.21(c) to extend the notice and comment period for those associated with the identified infeasible water management strategies or projects.

Subsection 357.12(c) is added to require RWPG submittal of an approved Technical Memorandum, which has previously been only a contractual requirement. The Technical Memorandum is a deliverable at the approximate mid-point of the planning cycle that presents a key, preliminary analysis of water demands, water availability, existing supply, and needs in a regional water planning area. This contractual requirement is being added as a rule including for the purpose of formalizing the document that forms the basis for making a decision regarding simplified planning. Starting with the development of the 2026 RWP, the Technical Memorandum will also be the documentation of the RWPG's determination that water management strategies or projects from the previously adopted RWP are no longer feasible.

The adopted Subsection 357.12(d) stipulates that the Executive Administrator review and comment on each Technical Memorandum and declarations of intent to pursue simplified planning. If the RWPG declares intent to pursue simplified planning, it must receive written approval from the Executive Administrator prior to implementing simplified planning. New language from proposal to adoption includes if the RWPG does not declare intent to pursue simplified planning, they may proceed without any additional approvals to develop their plan. Additionally, if the RWPG rescinds its intent to pursue simplified planning following written approval from the Executive Administrator, it must do so at a publicly noticed RWPG meeting prior to executing contract scope of work and budget amendments with the TWDB.

Subsection 357.12(e) is amended to implement a change to TWC §16.053(i) made by SB 1511 and clarify the process for the previously existing simplified planning provision. The rule states that RWPGs may elect to implement simplified planning, during planning cycles that do not immediately follow the implementation of the U.S. Census and in accordance with guidance to be provided by TWDB. Following updated source water availability analyses, if there are no significant changes to the water availability, water supplies, or water demands in the regional water planning area as determined by the planning group, the planning group may choose to develop a simplified RWP, as described in subparagraph 357.12(f)(3), in accordance with guidance provided by the Executive Administrator and without over-allocation of any water supply source utilized in the regional water planning area.

Subsection 357.12(f) is amended to outline the steps a RWPG must take in pursuing simplified planning in order to implement changes to TWC §16.053(i) made by SB 1511 and to clarify the process for simplified planning. It requires completion of the Technical Memorandum; meeting new statutory or other planning requirements; adopting previous RWP or State Water Plan information, where appropriate; and conducting other activities upon approval of the Executive Administrator necessary to complete an RWP.

Subsection 357.12(g) is added to require an additional public hearing on a RWPG's decision to pursue simplified planning.

Subsection 357.12(h) is added to require an RWPG meeting to consider comments received and take action on declaring to implement simplified planning for the regional water planning area.

In summary, the changes to Section 357.12 to implement the simplified planning provisions of SB 1511 require three meetings. First, the decision to pursue simplified planning must occur with completion of the Technical Memorandum. Second, the RWPG must hold a public hearing on the decision to pursue simplified planning and take comments for a period of 30 days following the hearing. Third, the RWPG must hold a meeting to consider the comments received and make a final declaration on implementation of simplified planning.

*Subchapter B. Guidance Principles and Notice Requirements.*

*Section 357.21. Notice and Public Participation.*

Subsection 357.21(a) is amended to implement a change to TWC §16.053(h) made by SB 347. The change requires that each RWPG and any committee or subcommittee of a RWPG are subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code. Subsection 357.21(a) is amended to reflect that the notice requirements included in this section for the RWPGs are in addition to Chapter 551, Government Code. RWPGs should also analyze Chapter 551, Government Code, in deciding what notice requirements apply to their meetings.

Paragraph 357.21(b)(1) is amended to clarify the required notice period for a RWPG for certain actions including approving revision requests to draft population and water demand projections, specifying that plans previous to the 2026 RWP will continue to follow these notice requirements when presenting their process of identifying potentially feasible water management strategies, approving requests to submit alternative strategy substitution approvals to the Executive Administrator, declaration of implementation of simplified planning following consideration of comments received at a public hearing on the RWPG's intent to pursue simplified planning, and meetings of RWPG committees and subcommittees.

Paragraph 357.21(c)(1) is amended to include that the RWPG's approval to submit its Technical Memorandum shall meet the defined notice requirements in the subsection and that, beginning with the development of the 2026 RWP, the process for identifying potentially feasible water management strategies, including the presentation of the analysis of infeasible water management strategies or projects, will be held to these longer notice requirements to increase notice to those associated with water management strategies or projects determined to be no longer feasible.

Paragraph 357.21(c)(2) is amended to clarify the previously required posting requirements of the public notice.

Subparagraph 357.21(c)(4)(D) is added to include notice requirements for project sponsors of water management strategies or projects that have been identified as infeasible.

Paragraph 357.21(d)(1) is amended to include that the RWPG's declaration to pursue simplified planning will be subject to a public hearing and associated notice as defined in this subsection.

Subparagraph 357.21(d)(3)(D) is amended to reflect a renumbered paragraph in this adopted rule.

Subparagraph 357.21(d)(5)(G) is added to require additional notice of simplified planning declarations to RWPGs that share sources, water management strategies, or projects with the RWPG that intends to pursue simplified planning.

Subparagraph 357.21(d)(5)(H) is added to include notice requirements for project sponsors of water management strategies or projects that are being amended from an approved regional water plan due to being identified as infeasible.

Paragraph 357.21(d)(7) is amended to clarify that document provision requirements are to be consistent with the other Subsections of Section 357.21.

A new paragraph 357.21(d)(8) is added to implement a change to TWC §16.053(h)(3) made by SB 1511. The change requires that the public hearing for the initially prepared plan be conducted at a central location that is readily accessible to the public.

Subsection 357.21(d)(7) is subsequently renumbered to 357.12(d)(9).

Subsection 357.21(d)(9)(A)(i) is amended to require a 30-day comment period following the public hearing on the declaration of intent to pursue simplified planning.

Subsection 357.21(d)(9)(C)(i) is amended to require RWPG consideration of public comments received prior to declaring implementation of simplified planning.

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

Subsection 357.22(14) is amended to require consideration of the water conservation best management practices available on the Texas Water Development Board's website in RWP development. This new requirement is in response to stakeholder comments received during and following a previous rulemaking.

Subsection 357.22(14) is subsequently renumbered to 357.22(15).

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

*Section 357.32. Water Supply Analysis.*

Subsection 357.32(d) is amended to implement a change to TWC §16.053(e) made by House Bill 2215, 85<sup>th</sup> (R) Legislative Session (relating to the deadline for adoption of desired future conditions in groundwater conservation districts). The change requires that RWPs shall be consistent with desired future conditions in the regional water planning area as of the most recent deadline for the board to adopt the state water plan.

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

*Section 357.44. Infrastructure Financing Analysis.*

Subsection 357.44 is amended to clarify the previously existing requirement of TWC §16.053(q) that RWPGs should assess what role the state should have in financing recommended strategies and projects, including proposed increases in the level of state participation.

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

Subsection 357.45(a) is amended to implement a change to TWC §16.053(a-1) made by SB 1511. The change requires that the state water plan assess impediments to implementation of board-prioritized projects. The adopted rule addresses information to be collected by the planning groups to support the state water plan assessment of impediments to implementation.

*Subchapter E. Adoption, Submittal, and Amendments to Regional Water Plans.*

*Section 357.51. Amendments to Regional Water Plans.*

Subsection 357.51(e) is amended to clarify the current public notice and process for a RWPG to substitute an alternative water management strategy for a recommended water management strategy into their approved RWP.

Subsection 357.51(g) is amended to implement a change to TWC §16.053(h)(10) made by SB 1511. The change requires RWPGs to amend their RWPs to exclude water management strategies or projects that cease to be feasible. The rule revision references existing requirements for RWP amendments to be utilized as appropriate and requires the planning group to address why the strategy or project was determined to be infeasible.

Subsection 357.51(g) is subsequently renumbered to 357.51(h).

*Subchapter F. Consistency and Conflicts in Regional Water Plans.*

*Section 357.62. Interregional Conflicts.*

Subsection 357.62(d) is amended to implement a change to TWC §16.053(h)(6) made by SB 1511. The change requires that the public hearing on the proposed recommendation for resolution of an interregional conflict be conducted at a central location that is readily accessible to the public within the respective regional water planning areas.

*Section 357.64. Conflicts Between Regional Water Plans and Groundwater Management Plans.*

Subsection 357.64(d) is amended to implement a change to TWC §16.053(p-2) made by SB 1511. The change requires that the public hearing on the revised groundwater management plan resulting from the resolution of a conflict between an approved RWP and an approved groundwater management plan be conducted at a central location that is readily accessible to the public within the district.

Subsection 357.64(e) is amended to implement a change to TWC §16.053(p-1) made by SB 1511. The change requires that the public hearing on the revised RWP resulting from the resolution of a conflict between an approved RWP and an approved groundwater management plan be conducted at a central location that is readily accessible to the public within the regional water planning area.

**REGULATORY IMPACT ANALYSIS DETERMINATION**

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes and provide greater clarity regarding the TWDB’s rules related to regional water planning.

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

**TAKINGS IMPACT ASSESSMENT**

The board evaluated these rule amendments and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of these amendments is to implement legislative changes, address stakeholder concerns raised through preliminary input, and clarify rules to make them more understandable regarding the TWDB’s rules related to regional water planning. These rule amendments would substantially advance this stated purpose by adding language related to legislative changes and clarifying existing language related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is

exempt under Texas Government Code §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these amended rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the amendments do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking requires compliance with state law regarding the state water planning process. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

## PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC) and Freese and Nichols, Inc. (FNI).

Regarding

Section 357.12. General regional water planning group responsibilities and procedures:

### *Comment*

CTWC commented that the subsection designation of "(a-1)" should be numbered and located as its own subsection within the rule.

### *Response*

The numbering convention utilized was deemed appropriate to place the new statutory requirement toward the beginning of the section, given that the requirement applies to all other actions outlined in the section. No changes were made in response to this comment.

### *Comment*

FNI commented that it supports proposed revisions to Section 357.12, related to infeasible water management strategy analysis, to be performed as a task in the development of regional water plans in conjunction with the identification of potentially feasible water management strategies; regional water planning group discretion in determining project schedules for implementation; and beginning implementation of the infeasible water management strategy process with the 2026 regional water planning cycle.

### *Response*

The Board acknowledges this comment. No changes have been made in response to this comment.

### *Comment*

CTWC commented that subsection §357.12(c) was not clear in its discussion of required content of the Technical Memorandum as relates to Board adopted population and water demand projections. CTWC requested clarification and explanation of the word choice for using adopted projections while defining the Technical Memorandum in §357.10(33) as "documentation of the regional water planning group's preliminary analysis..."

### *Response*

The Board adopts population and water demand projections each planning cycle in accordance with §357.31. Draft projections are developed by the TWDB for regional water planning group review and to allow for regional water planning group requests to revise. Following this process, final projections

recommendations are taken to the Board for consideration of adoption. This action generally happens near the mid-point of each planning cycle. The Technical Memorandum is defined as preliminary data because, although adopted by the Board, that projection data is subject to change prior to the adoption of a final regional water plan. This could include a revision to adopted population or demand projections, as provided for in §357.31(e)(2). No changes were made in response to this comment.

*Comment*

CTWC requested confirmation that the requirements in §357.12(c)(2) and (c)(3) of entering water availability and supply information in the state water planning database were consistent with the timing of the Technical Memorandum.

*Response*

Data entry into the state water planning database begins in advance of the development of the Technical Memorandum. Therefore, the data entry timing is consistent with the development of the Technical Memorandum. No changes have been made in response to this comment.

*Comment*

CTWC commented that it would be helpful to include language in §357.12(d) stating whether a regional water planning group that is not pursuing simplified planning must also await Executive Administrator approval before proceeding under the terms of the Technical Memorandum it submitted.

*Response*

The Board agrees that clarification of Executive Administrator action on approval of the Technical Memorandum is warranted. The rule is revised in response to this comment to clarify that the regional water planning groups not pursuing simplified planning may proceed without any additional approvals to develop their initially prepared plan. In response to this and another comment, the adopted rule language for Section 357.12(d) is: “The EA shall evaluate the Technical Memorandum and any declaration of intent to pursue simplified planning, if applicable, and issue written approval prior to implementation of simplified planning by the RWPG. If an RWPG has not declared to pursue simplified planning in their Technical Memorandum, they may proceed without any additional approvals to develop their IPP. If the RWPG chooses to rescind their decision to pursue simplified planning, they must do so prior to executing a contract scope of work and budget amendment with the TWDB. The RWPG must discuss and act on the decision at a public meeting posted under notice requirements of §357.21(b) of this title.”

*Comment*

FNI commented that, given the uncertainty of the effort involved in developing a simplified plan, language should be included to allow a regional water planning group which has declared an intent to pursue simplified planning to rescind its request prior to finalization of the amended contract scope of work and associated task and fee budgets.

*Response*

The Board agrees that clarification of allowable regional water planning group action following Executive Administrator approval of the simplified planning request is warranted. The rule is revised in response to this comment to clarify that a regional water planning group may rescind its decision to pursue simplified planning following the Executive Administrator’s written approval by acting at a properly noticed public meeting. In response to this and another comment, the adopted rule language for Section 357.12(d) is: “The EA shall evaluate the Technical Memorandum and any declaration of intent to pursue simplified planning, if applicable, and issue written approval prior to implementation of simplified planning by the RWPG. If an RWPG has not declared to pursue simplified planning in their Technical Memorandum, they may proceed without any additional approvals to develop their IPP. If the RWPG chooses to rescind their decision to pursue simplified planning, they must do so prior to executing a contract scope of work and budget amendment with the TWDB. The RWPG must discuss and act on the decision at a public meeting posted

under notice requirements of §357.21(b) of this title.”

Regarding

Section 357.21. Notice and public participation:

*Comment*

FNI commented that it supports proposed revisions to Section 357.21, including the clarification of notice and content requirements for meetings of regional water planning group subunits, meetings associated with infeasible water management strategy determination, and declaration of intent to pursue simplified planning.

*Response*

The Board acknowledges this comment. No changes have been made in response to this comment.

*Comment*

CTWC commented that they oppose the language in Sections 357.21(b)(5)(A), (c)(5)(A), and (d)(5)(A) stating that regional water planning groups can provide a notice and agenda for an upcoming meeting “to the County Clerk of each county in the Regional Water Planning Area” in lieu of posting the notice and meeting agenda on the website of the regional water planning group or host Political Subdivision. CTWC suggests that the definition be revised to allow notice to County Clerks as an additional method of posting notice rather than in lieu of posting on a website.

*Response*

The Board notes that this comment is not in response to any specific proposed rule change and does not address the topics outlined in the stated purpose of the rulemaking published in the *Texas Register* on December 22, 2017. A prior rulemaking allowed regional water planning group designated political subdivision (administrators) to post notice of regional water planning group meetings on their websites as an alternative to providing notice solely to the county clerk. Additionally, a contractual requirement was instated for each regional water planning group to host a website. The existing rule affords regional water planning groups the flexibility of posting notice on their website, while retaining the previous, long-standing option to provide the notice and agenda to each county clerk in their regional water planning area. This flexibility allows regional water planning groups to administer their notice requirements as they see appropriate for their planning area. No changes have been made in response to this comment.

*Comment*

CTWC commented that TWDB should revisit the notice requirements in Section 357.21 as they are lengthy and confusing and should be easy to understand and follow.

*Response*

The notice requirements of Section 357.21 are generally sequential in applicability and have been structured for the necessary additive notice required by certain regional water planning group actions during each planning cycle. Some of these notice and meeting requirements are statutory in nature while others are the result of extensive stakeholder input. TWDB recognized the complicated nature of the notice requirements associated with plan development and maintains a quick reference guide for use by the regional water planning groups and public. It is located on TWDB’s website at [http://www.twdb.texas.gov/waterplanning/rwp/planningdocu/2021/doc/current\\_docs/admin\\_docs/public\\_notice\\_quick\\_ref.pdf?d=1517527586205](http://www.twdb.texas.gov/waterplanning/rwp/planningdocu/2021/doc/current_docs/admin_docs/public_notice_quick_ref.pdf?d=1517527586205).

No changes have been made in response to this comment.

*Comment*

CTWC commented that, as a result of Senate Bill 347, TWDB should provide additional guidance to regional water planning group members and alternates who wish to discuss water planning matters outside of committee or subcommittee meetings, specifically on what communications may occur between individual members and alternates of a regional water planning group or committee outside of regularly scheduled regional water planning group and committee meetings.

*Response*

Texas Water Code §16.053(h)(12) (as added by Senate Bill 347) states that each regional water planning group and *any committee or subcommittee of a regional water planning group* are subject to the Open Meetings Act. TWDB has developed and provided additional guidance to RWPGs in response to questions received regarding the requirements placed on regional water planning groups by Senate Bill 347, which may be found on TWDB's website at

[http://www.twdb.texas.gov/waterplanning/rwp/planningdocu/2021/doc/current\\_docs/admin\\_docs/RWPGPolSubBMPGuide.pdf](http://www.twdb.texas.gov/waterplanning/rwp/planningdocu/2021/doc/current_docs/admin_docs/RWPGPolSubBMPGuide.pdf)

No change has been made in response to this comment.

Regarding

Section 357.32. Water supply analysis:

*Comment*

CTWC commented that it is supportive of utilizing procedures other than firm yield to evaluate surface water availability and suggested that TWDB provide more guidance and support for regional water planning groups to develop a safe yield for water supply reservoirs in their planning areas.

*Response*

Section 357.32(c)(1) of the Board's rules provides for regional water planning groups to evaluate existing surface water supplies using representative modeling assumptions or site-specific information with written approval by the Executive Administrator. Section 3.6 of TWDB's planning guidance document, General Guidelines for Fifth Cycle of Regional Water Plan Development, currently addresses the process for hydrologic variance requests for water availability determination, including the use of safe yield, which may be found on TWDB's website under the Contract Documents at

[http://www.twdb.texas.gov/waterplanning/rwp/planningdocu/2021/current\\_docs.asp](http://www.twdb.texas.gov/waterplanning/rwp/planningdocu/2021/current_docs.asp)

No change has been made in response to this comment.

Regarding

Section 357.51. Amendments to regional water plans:

*Comment*

FNI commented that it supports the language in Section 357.51(g), placing amendments for infeasible water management strategies after the formal revision process at the discretion of the regional water planning group.

*Response*

The Board acknowledges this comment. No changes have been made in response to this comment.



## STATUTORY AUTHORITY

These amendments are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.053.

The adopted rulemaking affects Chapter 16 of the Texas Water Code.

<rule>

## CHAPTER 357. REGIONAL WATER PLANNING.

### SUBCHAPTER A. GENERAL INFORMATION.

#### §357.10. Definitions and Acronyms.

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

- (1) Agricultural Water Conservation--Defined in §363.1302 of this title (relating to Definition of Terms).
- (2) Alternative Water Management Strategy--A fully evaluated Water Management Strategy that may be substituted into a Regional Water Plan in the event that a recommended Water Management Strategy is no longer recommended.
- (3) Availability--Maximum amount of raw water that could be produced by a source during a repeat of the Drought of Record, regardless of whether the supply is physically connected to or legally accessible by Water User Groups.
- (4) Board--The Texas Water Development Board.
- (5) Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common Wholesale Water Providers, having common sources, or other appropriate associations.
- (6) Commission--The Texas Commission on Environmental Quality.
- (7) County-Other--An aggregation of utilities and individual water users within a county and not included in Subsections §357.10(42)(A) - (D).
- (8) Drought Contingency Plan--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.
- (9) Drought Management Measures--Demand management activities to be implemented during drought that may be evaluated and included as Water Management Strategies.
- (10) Drought Management Water Management Strategy--A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.
- (11) Drought of Record--The period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.

(12) Executive Administrator (EA)--The Executive Administrator of the Board or a designated representative.

(13) Existing Water Supply--Maximum amount of water that is physically and legally accessible from existing sources for immediate use by a Water User Group under a repeat of Drought of Record conditions.

(14) Firm Yield--Maximum water volume a reservoir can provide each year under a repeat of the Drought of Record using anticipated sedimentation rates and assuming that all senior water rights will be totally utilized and all applicable permit conditions met.

(15) Interbasin Transfer of Surface Water--Defined and governed in Texas Water Code §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.

(16) Interregional Conflict--An interregional conflict exists when:

(A) more than one Regional Water Plan includes the same source of water supply for identified and quantified recommended Water Management Strategies and there is insufficient water available to implement such Water Management Strategies; or

(B) in the instance of a recommended Water Management Strategy proposed to be supplied from a different Regional Water Planning Area, the Regional Water Planning Group with the location of the strategy has studied the impacts of the recommended Water Management Strategy on its economic, agricultural, and natural resources, and demonstrates to the Board that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(17) Intraregional Conflict--A conflict between two or more identified, quantified, and recommended Water Management Strategies in the same Initially Prepared Plan that rely upon the same water source, so that there is not sufficient water available to fully implement all Water Management Strategies and thereby creating an over-allocation of that source.

(18) Initially Prepared Plan (IPP)--Draft Regional Water Plan that is presented at a public hearing in accordance with §357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(19) Major Water Provider (MWP)--A Water User Group or a Wholesale Water Provider of particular significance to the region's water supply as determined by the Regional Water Planning Group. This may include public or private entities that provide water for any water use category.

(20) Modeled Available Groundwater (MAG) Peak Factor--A percentage (e.g., greater than 100 percent) that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, for planning purposes, shall be considered temporarily available for pumping consistent with desired future conditions. The approval of a MAG Peak Factor is not intended as a limit to permits or as guaranteed approval or pre-approval of any future permit application.

(21) Planning Decades--Temporal snapshots of conditions anticipated to occur and presented at even intervals over the planning horizon used to present simultaneous demands, supplies, needs, and strategy volume data. A Water Management Strategy that is shown as providing a supply in the 2040 decade, for example, is assumed to come online in or prior to the year 2040.

(22) Political Subdivision--City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other Political Subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

- (23) Regional Water Plan (RWP)--The plan adopted or amended by a Regional Water Planning Group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.
- (24) Regional Water Planning Area (RWPA)--Area designated pursuant to Texas Water Code §16.053.
- (25) Regional Water Planning Group (RWPG)--Group designated pursuant to Texas Water Code §16.053.
- (26) RWPG-Estimated Groundwater Availability--The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.
- (27) Retail Public Utility--Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, Political Subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."
- (28) Reuse--Defined in §363.1302 of this title (relating to Definition of Terms).
- (29) State Drought Preparedness Plan--A plan, separate from the State Water Plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).
- (30) State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).
- (31) State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).
- (32) State Water Planning Database--Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect, analyze, and disseminate regional and statewide water planning data.
- (33) Technical Memorandum--Documentation of the RWPG's preliminary analysis of Water Demand projections, water Availability, Existing Water Supplies, and Water Needs and declaration of the RWPG's intent of whether or not to pursue simplified planning.
- (34) Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.
- (35) Water Conservation Measures--Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies.
- (36) Water Conservation Plan--The most current plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 10,000 acre-feet per year or more for irrigation, and the most current plan required by Texas Water Code §13.146 from a Retail Public Utility that provides potable water service to 3,300 or more connections. These plans must include specific, quantified 5-year and 10-year targets for water savings.

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

(38) Water Demand--Volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.

(39) Water Management Strategy (WMS)--A plan to meet a need for additional water by a discrete Water User Group, which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands. A Water Management Strategy may or may not require associated Water Management Strategy Projects to be implemented.

(40) Water Management Strategy Project (WMSP)--Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs.

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

(42) Water User Group (WUG)--Identified user or group of users for which Water Demands and Existing Water Supplies have been identified and analyzed and plans developed to meet Water Needs. These include:

(A) Privately-owned utilities that provide an average of more than 100 acre-feet per year for municipal use for all owned water systems;

(B) Water systems serving institutions or facilities owned by the state or federal government that provide more than 100 acre-feet per year for municipal use;

(C) All other Retail Public Utilities not covered in paragraphs (A) and (B) that provide more than 100 acre-feet per year for municipal use;

(D) Collective Reporting Units, or groups of Retail Public Utilities that have a common association and are requested for inclusion by the RWPG;

(E) Municipal and domestic water use, referred to as County-Other, not included in paragraphs (A)-(D) of this subsection; and

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

(43) Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that delivers or sells water wholesale (treated or raw) to WUGs or other WWPs or that the RWPG expects or recommends to deliver or sell water wholesale to WUGs or other WWPs during the period covered by the plan. The RWPGs shall identify the WWPs within each region to be evaluated for plan development.

#### §357.11. Designations.

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

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs shall be developed, taking into consideration factors such as:

(1) River basin and aquifer delineations;

(2) Water utility development patterns;

(3) Socioeconomic characteristics;

(4) Existing RWPA's;

(5) Political Subdivision boundaries;

(6) Public comment; and

(7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RWPG shall at a minimum address the following elements:

(1) definition of a quorum necessary to conduct business;

(2) method to be used to approve items of business including adoption of RWPs or amendments thereto;

(3) methods to be used to name additional members;

(4) terms and conditions of membership;

(5) methods to record minutes and where minutes will be archived as part of the public record; and

(6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 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 an RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA;

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

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

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to

serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures and water conservation practices.

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

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

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

(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).

(a-1) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code.

(b) An RWPG shall hold a public meeting to determine the process for identifying potentially feasible WMSs; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible WMSs that are potentially feasible for meeting a Water Need in the region. The public meeting under this subsection shall be in accordance with the requirements of §357.21(b) of this title, for the development of RWPs previous to the 2026 RWP. Beginning with the development of the 2026 RWP, and every RWP thereafter, this meeting shall be held in accordance with the requirements of §357.21(c) of this title and shall include the results of the analysis of infeasible WMSs or WMSPs, as defined by Texas Water Code §16.053(h)(10), included in the most recently adopted previous RWP. Infeasible WMSs or WMSPs shall be identified based on project sponsor provided information or local knowledge, as acquired through plan development activities such as surveys, and as determined based on implementation schedules consistent with implementation by the project sponsors. The group shall provide notice to all associated project sponsors and amend its adopted RWP as appropriate based upon the analysis.

(c) The RWPGs shall approve and submit a Technical Memorandum to the EA after notice pursuant to

§357.21(c) of this title. The Technical Memorandum shall include:

- (1) The most recent population and Water Demand projections adopted by the Board;
  - (2) Updated source water Availability utilized in the RWPA, as entered into the State Water Planning Database;
  - (3) Updated Existing Water Supplies, as entered into the State Water Planning Database;
  - (4) Identified Water Needs and surpluses;
  - (5) The documented process used by the RWPG to identify potentially feasible WMSs;
  - (6) The potentially feasible WMSs identified as of the date of submittal of the Technical Memorandum to the EA, if any;
  - (7) Beginning with the development of the 2026 RWP and each RWP thereafter, a listing of the infeasible WMSs and WMSPs as determined by the RWPG pursuant to TWC §16.053(h)(10) and subsection (b) of this section; and
  - (8) During each off-census RWP development, the RWPG's declaration of intent to pursue simplified planning for that planning cycle. If the RWPG intends to pursue simplified planning, the RWPG shall document the process to authorize and initiate subsection (g) of this section.
- (d) The EA shall evaluate the Technical Memorandum and any declaration of intent to pursue simplified planning, if applicable, and issue written approval prior to implementation of simplified planning by the RWPG. If an RWPG has not declared to pursue simplified planning in their Technical Memorandum, they may proceed without any additional approvals to develop their IPP. If the RWPG chooses to rescind their decision to pursue simplified planning, they must do so prior to executing a contract scope of work and budget amendment with the TWDB. The RWPG must discuss and act on the decision at a public meeting posted under notice requirements of §357.21(b) of this title.
- (e) If applicable, and approved by the EA, an RWPG may implement simplified planning in off-census planning cycles in accordance with guidance to be provided by the EA. An RWPG may only pursue simplified planning if:
- (1) the RWPG determines in its analysis of Water Needs that it has sufficient Existing Water Supplies in the RWPA to meet all Water Needs for the 50-year planning period while identifying Existing Water Supplies that are available for voluntary redistribution in the RWPA or to other RWPAs; or
  - (2) an RWPG determines, including based on its analysis of source water Availability, that there are no significant changes, as determined by the RWPG, to water Availability, Existing Water Supplies, or Water Demands in the RWPA. A determination that there have been no significant changes may not be based solely on an aggregated, region-wide basis without consideration of sub-regional changes.
- (f) If an RWPG elects to pursue simplified planning, it must:
- (1) Complete the Technical Memorandum in subparagraph (c) of this paragraph and, based upon the analysis, determine and document whether significant changes have resulted from the most recently adopted RWP;
  - (2) Meet new statutory or other planning requirements that come into effect during the most recent planning cycle;
  - (3) where appropriate, adopt previous RWP or State Water Plan information, updated as necessary, as the



IPP and RWP, in accordance with guidance to be provided by the EA; and

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

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

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

## SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS.

### §357.21. Notice and Public Participation.

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

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

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; population projection and Water Demand projection revision requests to the EA regarding draft projections; process of identifying potentially feasible WMSs for plans previous to the 2026 RWPs; meetings to replace RWPG members or addition of new RWPG members; submittal of request to EA for approval of an Alternative WMS substitution; declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning; adoption of RWPs; and RWPG committee and subcommittee meetings.

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

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

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

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

(4) Entities to be notified in writing include:

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

(B) any person or entity who has requested notice of RWPG activities.

(5) Notice and agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; and

(B) Texas Secretary of State website.

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

(A) Agenda of meeting; and

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

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

(1) These notice requirements apply to the following RWPG actions: population projection and Water Demand projection revision requests to officially adopted Board projections; approval to submit Technical Memorandum; substitution of Alternative WMSs; process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs for plans beginning with the 2026 plan; and minor amendments to RWPs.

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

(3) Notice shall include:

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

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

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

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

(4) Entities to be notified in writing include:

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

(B) any person or entity who has requested notice of RWPG activities;

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

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

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

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; and

(B) Texas Secretary of State website.

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

(A) Agenda of meeting; and

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

(7) Public comments to be accepted as follows:

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

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

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

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

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; public hearings on declarations to pursue simplified planning, major amendments to RWPs; and holding hearings for IPPs.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

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

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

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

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

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (9)(A) of this subsection.

(4) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

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

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

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

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

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

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

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

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

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

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

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA;

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

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

(A) Agenda of meeting; and

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

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

(9) Public comments to be accepted as follows:

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

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to an RWP or declaration of intent to pursue simplified planning.

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

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

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when declaring implementation of simplified planning, adopting an RWP or adopting a major amendment to an RWP.

(ii) Comments associated with a preplanning meeting must be considered prior to taking RWPG action.

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

(1) These notice requirements apply when an RWPG is requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA at least 30 days prior to Board consideration of funding applications.

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

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

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

(B) Each county judge of a county located in whole or in part in the RWPA;

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

(D) All other RWPGs.

(5) Notice shall also be posted on the website of the RWPG or host Political Subdivision.

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

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

(1) Water Conservation Plans;

(2) drought management and Drought Contingency Plans;

(3) information compiled by the Board from water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits);

(4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;

- (5) local and regional water management plans;
  - (6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code §35.019 (relating to Priority Groundwater Management Areas);
  - (7) the Texas Clean Rivers Program;
  - (8) the U.S. Clean Water Act;
  - (9) water management plans;
  - (10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;
  - (11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code §16.054 (relating to Local Water Planning);
  - (12) approved groundwater regulatory plans;
  - (13) potential impacts on public health, safety, or welfare;
  - (14) water conservation best management practices available on the TWDB website; and
  - (15) any other information available from existing local or regional water planning studies.
- (b) The RWP shall contain a separate chapter for the contents of §§357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.44, 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.

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

§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) For surface water supply analyses, RWPGs shall use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. As the default approach for evaluating existing supplies, RWPGs shall assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use better, more representative, water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available and approved in writing by the EA.
- (1) Evaluation of existing stored surface water available during Drought of Record conditions shall be based on Firm Yield. The analysis may be based on justified operational procedures other than Firm Yield. The EA

shall consider a written request from an RWPG to use procedures other than Firm Yield.

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

(d) RWPGs shall use modeled available groundwater volumes for groundwater Availability, as issued by the EA, and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater Availability used in the RWP must be consistent with the desired future conditions as of the most recent deadline for the Board to adopt the State Water Plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent State Water Plan.

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

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

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

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

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

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

(e) RWPGs shall evaluate the Existing Water Supplies for each WUG and WWP.

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

(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 MWP in accordance with §357.31(b) of this title.

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

#### §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 WMSs and associated WMSPs. The assessment shall also describe what role the RWPG proposes for the state in financing recommended WMSs and associated WMSPs, including 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.

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

(a) RWPGs shall describe the level of implementation of previously recommended WMSs and associated impediments to implementation in accordance with guidance provided by the board. Information on the progress of implementation of all WMSs that were recommended in the previous RWP, including conservation and Drought Management WMSs; and the implementation of WMSPs that have affected progress in meeting the state's future water needs.

(b) RWPGs shall 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 WWPs; and

(4) Recommended and Alternative WMSs and WMSPs.

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

##### §357.51. Amendments to Regional Water Plans.

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

(1) The petition must state:

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

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

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

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in



writing. The Political Subdivision that submitted the petition shall receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA, after which the EA shall present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA shall provide the RWPG, the Political Subdivision submitting the petition, and any Political Subdivision determined by the EA to be affected by the issue 30 days notice. At the public meeting, the Board may direct the RWPG to amend its RWP based on the local Political Subdivision's request.

(b) Major Amendments to RWPs and State Water Plan. An RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(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. An RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

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

(2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment 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; and

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

(4) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled RWPG meeting 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) An RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.

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

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

(B) does not relate to a new reservoir;

(C) does not increase unmet needs or produce new unmet needs in the adopted RWP;

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

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

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

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

(4) RWPG Public Meeting. After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(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 an RWP or the State Water Plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code §5.001, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, an RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

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

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

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

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

(g) Amendment for Infeasible Recommended WMSs or WMSPs. Following the results of the analysis presented at a public meeting in accordance with §357.12(b) of this title, an RWPG shall amend an adopted RWP to remove an infeasible recommended WMS or WMSP, as defined by Texas Water Code §16.053(h)(10). The RWPG will follow the amendment processes in accordance with sub-sections (b), (c), or (e) of this section. The amendment shall summarize the project components and address why they were determined to be infeasible. Subsequent amendments during the planning cycle for infeasible recommended WMS or WMSP may occur at the discretion of the RWPG based upon information presented to the RWPG by project sponsors.

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

## SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS.

### §357.62. Interregional Conflicts.

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

- (1) notify the affected RWPGs of the nature of the interregional conflict;
- (2) request affected RWPGs appoint a representative or representatives authorized to negotiate on behalf of the RWPG and notify the EA in writing of the appointment;
- (3) request affected RWPGs' assistance in resolving the conflict; and
- (4) negotiate resolutions of conflicts with RWPGs as determined by the EA.

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

- (1) determine a proposed recommendation for resolution of the conflict;
  - (2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the Texas Register and in a newspaper of general circulation in each county located in whole or in part in the RWPGAs involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(d) of this title (relating to Notice and Public Participation) in the RWPGAs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPGAs proposed to be impacted and to each affected RWPG;
  - (3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, Political Subdivisions, and members of the public on the issues identified by the Board as unresolved problems; and
  - (4) make a recommendation to the Board for resolution of the conflict.
- (c) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.

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

### §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 at a central location readily accessible to the public within the district. 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. The RWPG shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the regional water planning area.

(f) At the Board's discretion, the Board shall include in the State Water Plan a discussion of the conflict and its resolution.