

## Amending an Approved Regional Water Plan

### Background

Every five years, the 16 regional water planning groups must develop and adopt regional water plans, which are then submitted to the Texas Water Development Board (TWDB) for approval. The TWDB then compiles the regional water plans into a state water plan. During the five-year span between the regular regional water plan adoptions, the plans may need to be amended to identify long-term water supplies.

### How is an amendment to a regional water plan initiated?

A regional water planning group may initiate an amendment on its own. A political subdivision of the state of Texas in the regional water planning area may also request an amendment from the regional water planning group on the basis of changed conditions or new information<sup>1</sup>.

The following general principles govern the amendment process:

- The planning group must formally consider the request within 180 days of its submittal.
- The planning group may, at its discretion, accept or reject the proposed amendment.
- The political subdivision may petition the TWDB executive administrator for agency review if the political subdivision is not satisfied with the planning group's decision<sup>2</sup>.
- The executive administrator may ask the regional water planning group to make a revision.
- If the revision is not made within 90 days, the matter is presented to the TWDB, which can order a revision to the regional water plan and state water plan on the basis of changed conditions or new information.

### What are the ways that a regional water plan may be modified?

**Revisions to TWDB Board Adopted Population or Water Demand Projections** may be requested from the TWDB whenever current projections are no longer reasonable owing to changed conditions or the availability of new information<sup>3</sup>.

The process requires the following:

- A regional water planning group must submit a revision request, usually based on a request from a political subdivision, to the TWDB.
- The regional water planning group must provide at least 14 days notice for a meeting and make the proposed population and/or water demand projection revisions available for public inspection prior to the meeting.
- The regional water planning group must accept oral and written public comments at the meeting in which the request is considered and written comments for 14 days prior to the meeting.
- The regional water planning group submits the revision request to the TWDB, including a summary of all comments the planning group received at the meeting and during the comment period.

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<sup>1</sup> 31 TAC §357.51 (a). Any amendment proposed must meet rules and guidelines for development of a regional water plan.

<sup>2</sup> The petition must be provided to the regional water planning group and must include the changed condition or new information that affects the approved regional water plan; the specific sections and provisions of the approved regional water plan that are affected by the changed condition or new information; the efforts made with the regional water planning group to obtain an amendment; and the proposed amendment to the approved regional water plan (31 TAC §357.51 (a)).

<sup>3</sup> 31 TAC §357.31.

- The TWDB reviews the request in accordance with contract guidelines and consults with the Texas Department of Agriculture, Texas Commission on Environmental Quality, and Texas Parks and Wildlife Department. Within 45 days of receipt of a revision request from a regional water planning group, the executive administrator responds to the request.
- Acceptable revisions will be presented for consideration of approval at an upcoming TWDB Board meeting.

**Substitutions** of water management strategies that have already been fully evaluated and are explicitly identified as “alternative” water management strategies in adopted regional water plans may be made if<sup>4</sup>

- the water management strategy originally recommended is no longer recommended, and
- the proposed substitution of the alternative water management strategy is capable of meeting the same water need without over-allocating any source.

The substitution process requires the following:

- An entity requests that the regional water planning group make a substitution.
- The regional water planning group considers the proposed substitution request as an action item on an agenda at one of its regular meetings.
- Proposed substitution materials are submitted to the TWDB executive administrator for consideration<sup>5</sup>.
- The executive administrator provides written approval of the substitution if it is in accordance with 31 Texas Administrative Code (TAC) § 357.51(e).
- The regional water planning group adopts the substitution at a public meeting with an opportunity for public input. This meeting requires at least a 14-day notice<sup>6</sup>. The regional water planning group considers public comments and may adopt the amendment at the meeting.
- The regional water planning group submits evidence of the substitution to the TWDB, including a summary of public comments.
- The TWDB then amends the state water plan, which requires a public hearing on the proposed state water plan amendment and a 30-day public notice prior to its adoption.

**Minor amendments** can be made to incorporate changes that do not

- result in over-allocation of an existing or planned source of water,
- relate to a new reservoir,
- increase unmet needs or produce new unmet needs in the adopted regional water plan,
- have a significant effect on instream flows, environmental flows, or freshwater flows to bays and estuaries,
- have a significant substantive impact on water planning or previously adopted management strategies, or
- delete or change any legal requirements of a plan<sup>7</sup>.

The minor amendment process requires the following:

- An entity requests the regional water planning group to amend a regional water plan.
- The regional water planning group considers the request and takes action to pursue the amendment at one of its regular public meetings.
- Amendment materials are prepared in accordance with TWDB rules and guidance, and a request for a “minor amendment determination” is submitted to the TWDB’s executive administrator.
- The executive administrator reviews the request and issues a determination to the planning group.
- If the executive administrator determines that it is a “minor amendment,” the regional water planning group considers adopting the amendment at a public meeting with an opportunity for public input. This meeting requires at least a 14-day notice<sup>8</sup>. The regional water planning group considers public comments

<sup>4</sup> Per 31 TAC §357.51 (e).

<sup>5</sup> 31 TAC §357.51 (e).

<sup>6</sup> 31 TAC §357.21 (g)(2) and posted under the Texas Open Meetings Act.

<sup>7</sup> 31 TAC §357.51 (c).

<sup>8</sup> 31 TAC §357.21 (g)(2) and posted under the Texas Open Meetings Act.

and may adopt the amendment at the meeting<sup>9</sup>.

- The regional water planning group submits the adopted minor amendment materials, including a summary of public comments, to the TWDB for approval.
- The TWDB reviews the adopted minor amendment and, if acceptable, approves it at its next regular Board meeting.
- The TWDB then amends the state water plan, which requires a public hearing on the proposed state water plan amendment and a 30-day public notice prior to its adoption.

**Major amendments** can be made to incorporate changes that cannot be addressed through a minor amendment. Major amendments shall not result in an over-allocation of an existing or planning source of water, and shall conform with all other rules for regional water plan development<sup>10</sup>.

The major amendment process requires the following:

- An entity requests that the regional water planning group make an amendment.
- The regional water planning group considers the request and takes action to pursue the amendment at one of its regular public meetings.
- Amendment materials are prepared in accordance with TWDB rules and guidance for consideration at a public hearing.
- The regional water planning group holds a public hearing on the proposed amendment<sup>11</sup>. This process requires 30 days between published notice of the hearing and the hearing date and a 30-day comment period following the hearing.
- The regional water planning group considers all public comments received and may adopt the regional water plan amendment at a regular planning group meeting<sup>12</sup> after the 30-day comment period<sup>13</sup>.
- The regional water planning group submits the adopted amendment materials, including a summary of public comments, to the TWDB for approval<sup>14</sup>.
- The TWDB reviews the adopted major amendment and, if acceptable, approves it at its next regular Board meeting.
- The TWDB then amends the state water plan, which requires a public hearing on the proposed state water plan amendment and a 30-day public notice prior to its adoption.

## Who pays for an amendment?

Typically, the entity requesting the amendment pays for the costs related to developing regional water plan amendment materials. TWDB grant funds are prohibited to be used for amendments related to the revision of adopted population and demand projections.

## Why might a regional water plan need to be amended?

If a project sponsor seeks (a) funding from the TWDB for a water supply project or (b) a water rights permit from the Texas Commission on Environmental Quality, the proposed project must be found to be consistent with the approved regional water plan and state water plan.

If the proposed project is not already consistent with the approved regional and state water plan and the sponsor cannot wait to incorporate the proposed project into the next adopted regional water plan, the existing

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<sup>9</sup> Amendment adoption must include response to public comment and must otherwise comply with TWDB technical guidelines.

<sup>10</sup> 31 TAC §357.51 (b).

<sup>11</sup> 31 TAC §357.21 (g)(3).

<sup>12</sup> Posted under the Texas Open Meetings Act; see also 31 TAC §357.21 (g)(1).

<sup>13</sup> Amendment adoption must include response to public comment and must otherwise comply with TWDB technical guidelines.

<sup>14</sup> Amendments to an approved regional water plan shall include a technical report and data in accordance with TWDB specifications, executive summary, and summaries of all written and oral comments received with a response. Data must be transferred to the TWDB (31 TAC §357.50 (g)).

<sup>15</sup> 31 TAC §357.21 (g)(1).

regional water plan must be amended, or a waiver of statutory requirements regarding consistency with such plans must be obtained from the TWDB and/or Texas Commission on Environmental Quality<sup>16</sup>.

Additionally, in order for projects to be eligible for funding from the State Water Implementation Fund for Texas, projects must be recommended in the most recent regional and state water plans and have an associated capital cost.

## Statutes and Rules

Texas Water Code, Chapter 16, Subchapter C:

<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.16.htm>

31 TAC Chapter 357:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=31&pt=10&ch=357&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=31&pt=10&ch=357&rl=Y)

For more information on regional water planning and related guidance, please visit the following Web site:

<http://www.twdb.texas.gov/waterplanning/rwp/index.asp>

### **Note:**

*This guidance document does not cover all procedural and substantive requirements applicable to water plan amendments. For this reason, this document should not be used as a substitute for the regulations as written. In case of doubt, consult the Texas Water Code, Chapter 16, Subchapter C, and 31 TAC Chapter 357. Regional water planning groups or political subdivisions with legal questions regarding changes to the regional water plans should consult with their own attorneys or the Texas Attorney General's Office.*

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<sup>16</sup> 31 TAC §357.60 (b)(5).