



## Regional and State Water Planning Rules (31 TAC) and Texas Statute Reference Pamphlet<sup>1</sup>

(as of May 2022)

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<sup>1</sup> This pamphlet contains excerpts from agency planning rules and Texas statutes and is provided as a tool to aid in the Regional Water Planning process. It is not comprehensive on every law that may apply. **Statutes in this pamphlet are current as of the 87<sup>th</sup> Legislative Session, 2021.** For complete, up to date rule documents, please visit our website at: <http://www.twdb.texas.gov/about/rules/>. For complete, up to date Texas statutes, please visit the Texas Constitution and Statutes webpage at: <http://www.statutes.legis.state.tx.us/>.

## Table of Contents

<b>   TEXAS ADMINISTRATIVE CODE, TITLE 31, PART 10   </b> .....	<b>1</b>
<b>CHAPTER 357 – REGIONAL WATER PLANNING</b> .....	<b>1</b>
<b>Subchapter A – General Information</b> .....	<b>1</b>
§357.10 – Definitions and Acronyms .....	1
§357.11 – Designations .....	5
§357.12 – General Regional Water Planning Group Responsibilities and Procedures .....	8
<b>Subchapter B – Guidance Principles and Notice Requirements</b> .....	<b>10</b>
§357.20 – Guidance Principles for State and Regional Water Planning .....	10
§357.21 – Notice and Public Participation .....	11
§357.22 – General Considerations for Development of Regional Water Plans.....	14
<b>Subchapter C – Planning Activities for Needs Analysis and Strategy Recommendations</b> .....	<b>15</b>
§357.30 – Description of the Regional Water Planning Area .....	15
§357.31 – Projected Population and Water Demands.....	15
§357.32 – Water Supply Analysis .....	16
§357.33 – Needs Analysis: Comparison of Water Supplies and Demands .....	18
§357.34 – Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects .....	19
§357.35 – Recommended and Alternative Water Management Strategies and Water Management Strategy Projects .....	23
<b>Subchapter D – Impacts, Drought Response, Policy Recommendations, and Implementation</b> .....	<b>24</b>
§357.40 – Impacts of Regional Water Plan .....	24
§357.41 – Consistency with Long-Term Protection of Water Resources, Agricultural Resources, and Natural Resources .....	24
§357.42 – Drought Response Information, Activities, and Recommendations .....	25
§357.43 – Regulatory, Administrative, or Legislative Recommendations	

..... 27

§357.45 – Implementation and Comparison to Previous Regional  
Water Plan ..... 28

**Subchapter E – Adoption, Submittal, and Amendments to Regional  
Water Plans .....28**

    §357.50 – Adoption, Submittal, and Approval of Regional Water Plans  
    ..... 28

    §357.51 – Amendments to Regional Water Plans ..... 31

**Subchapter F – Consistency and Conflicts in Regional Water Plans.....34**

    §357.60 – Consistency of Regional Water Plans ..... 34

    §357.61 – Intraregional Conflicts in Development of Regional Water  
    Plans..... 35

    §357.62 – Interregional Conflicts ..... 35

    §357.63 – Failure of a Regional Water Plan to Meet Regional Water  
    Planning Requirements..... 36

    §357.64 – Conflicts Between Regional Water Plans and Groundwater  
    Management Plans ..... 36

**CHAPTER 358 – STATE WATER PLANNING GUIDELINES.....37**

**Subchapter A – State Water Plan Development .....37**

    §358.1 – Applicability ..... 37

    §358.2 – Definitions ..... 38

    §358.3 – Guidance Principles ..... 39

    §358.4 – Guidelines ..... 41

**Subchapter B – Data Collection .....43**

    §358.5 – Groundwater and Surface Water Use Surveys ..... 43

    §358.6 – Water Loss Audits..... 44

**CHAPTER 355 – RESEARCH AND PLANNING FUND .....46**

**Subchapter C – Regional Water Planning Grants .....46**

    §355.90 – Applicability and Definitions ..... 46

    §355.91 – Notice of Funds and Submission and Review of Applications  
    ..... 47

    §355.92 – Use of Funds..... 48

    §355.93 – Board Consideration of Applications; Applicant’s

Responsibilities; and Contract.....	50
<b>   TEXAS WATER CODE, TITLE 2, SUBTITLE C   </b> .....	<b>51</b>
<b>CHAPTER 16 – PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT</b> .....	<b>51</b>
<b>Subchapter C – Planning</b> .....	<b>51</b>
§16.051 – State Water Plan: Drought, Conservation, Development, and Management; Effect of Plan .....	51
§16.052 – Interregional Planning Council .....	52
16.053 – Regional Water Plans .....	53
§16.054 – Local Water Planning.....	61
<b>   TEXAS WATER CODE, Selected Statutes and Statute Excerpts Relevant to Regional Water Planning   </b> .....	<b>62</b>
Chapter 5	62
Chapter 10.....	62
Chapter 11.....	62
Chapter 13.....	64
Chapter 15.....	65
Chapter 16.....	65
Chapter 35.....	66
Chapter 36.....	66
Miscellaneous .....	70

# || TEXAS ADMINISTRATIVE CODE, TITLE 31, PART 10 ||

## CHAPTER 357 – REGIONAL WATER PLANNING

### Subchapter A – General Information

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#### §357.10 – Definitions and Acronyms

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

(1) **Agricultural Water Conservation** – Defined in §363.13022 of this title (relating to Definition of Terms).

(2) **Alternative Water Management Strategy** – A fully evaluated Water Management Strategy that may be substituted into a Regional Water Plan in the event that a recommended Water Management Strategy is no longer recommended.

(3) **Availability** – Maximum amount of raw water that could be produced by a source during a repeat of the Drought of Record, regardless of whether the supply is physically connected to or legally accessible by Water User Groups.

(4) **Board** – The Texas Water Development Board.

(5) **Collective Reporting Unit** – A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common Wholesale Water Providers, having common sources, or other appropriate associations.

(6) **Commission** – The Texas Commission on Environmental Quality.

(7) **County-Other** – An aggregation of utilities and individual water users within a county and not included in paragraph (43)(A) - (D) of this section.

(8) **Drought Contingency Plan** – A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

(9) **Drought Management Measures** – Demand management activities to be implemented during drought that may be evaluated and included as Water Management Strategies.

(10) **Drought Management Water Management Strategy** – A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.

(11) **Drought of Record** – The period of time when historical records indicate

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<sup>2</sup> §363.1302: Agricultural water conservation--Those practices, techniques or technologies used in agriculture, as defined in Texas Agriculture Code, which will improve the efficiency of the use of water and further water conservation in the state, including but not limited to those programs or projects defined in Texas Water Code §§17.871 - 17.912.

that natural hydrological conditions would have provided the least amount of water supply.

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

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

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

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

(16) **Interregional Conflict** – An interregional conflict exists when:

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

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

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

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

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

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

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

example, is assumed to come online in or prior to the year 2040.

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

(23) **Regional Water Plan (RWP)** – The plan adopted or amended by a Regional Water Planning Group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.

(24) **Regional Water Planning Area (RWPA)** – Area designated pursuant to Texas Water Code §16.053.

(25) **Regional Water Planning Gallons Per Capita Per Day** – For Regional Water Planning purposes, Gallons Per Capita Per Day is the annual volume of water pumped, diverted, or purchased minus the volume exported (sold) to other water systems or large industrial facilities divided by 365 and divided by the permanent resident population of the Municipal Water User Group in the regional water planning process. Coastal saline and reused/recycled water is not included in this volume.

(26) **Regional Water Planning Group (RWPG)** – Group designated pursuant to Texas Water Code §16.053.

(27) **RWPG-Estimated Groundwater Availability** – The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.

(28) **Retail Public Utility** – Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, Political Subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

(29) **Reuse** – Defined in §363.1302 of this title (relating to Definition of Terms).

(30) **State Drought Preparedness Plan** – A plan, separate from the State Water Plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(31) **State Drought Response Plan** – A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(32) **State Water Plan** – The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

(33) **State Water Planning Database** – Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect, analyze, and disseminate regional and statewide water planning data.

(34) **Technical Memorandum** – Documentation of the RWPG's preliminary analysis of Water Demand projections, water Availability, Existing Water Supplies, and

Water Needs and declaration of the RWPG's intent of whether or not to pursue simplified planning.

(35) **Unmet Water Need** – The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(36) **Water Conservation Measures** – Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies.

(37) **Water Conservation Plan** – The most current plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 10,000 acre-feet per year or more for irrigation, and the most current plan required by Texas Water Code §13.146 from a Retail Public Utility that provides potable water service to 3,300 or more connections. These plans must include specific, quantified 5-year and 10-year targets for water savings.

(38) **Water Conservation Strategy** – A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

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

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

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

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

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

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

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

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

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



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

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

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

**Source Note:** The provisions of this §357.10 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective November 30, 2015, 40 TexReg 8648; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 1, 2022, 47 Tex Reg 2527

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### §357.11 – Designations

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(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 RWPAs 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 RWPAs;
- (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 RWPGs or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and
- (6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

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

- (1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;
- (2) Counties, defined as the county governments for the 254 counties in Texas;
- (3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;
- (4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;
- (5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;
- (6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;
- (7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 500 employees or less than \$10 million in gross annual receipts;
- (8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;
- (9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority;
- (10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

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

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

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

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

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

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

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

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

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

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

**(g)** Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

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

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

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

**(k)** The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following

provisions:

(1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.

(2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.

(3) Interregional Planning Council members will serve until adoption of the State Water Plan.

(4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.

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

**Source Note:** The provisions of this §357.11 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 1, 2022, 47 TexReg 2527

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

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

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

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

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

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

**(b)** In accordance with the requirements of §357.21(g)(2) of this title, an RWPG shall hold a public meeting to determine the process for identifying potentially feasible

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

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

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

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

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

(4) Identified Water Needs and surpluses;

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

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

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

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

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

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

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

(1) the RWPG determines in its analysis of Water Needs that it has sufficient

Existing Water Supplies in the RWPA to meet all Water Needs for the 50-year planning period while identifying Existing Water Supplies that are available for voluntary redistribution in the RWPA or to other 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 subsection (c) of this section and, based upon the analysis, determine and document whether significant changes have resulted from the most recently adopted RWP;

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

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

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

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

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

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

**Source Note:** The provisions of this §357.12 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective May 1, 2022, 47 TexReg 2527

## Subchapter B – Guidance Principles and Notice Requirements

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### §357.20 – Guidance Principles for State and Regional Water Planning

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Development of the State Water Plan and of RWPs shall be guided by the principles stated in §358.3 of this title (relating to Guidance Principles).

**Source Note:** The provisions of this §357.20 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589

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### §357.21 – Notice and Public Participation

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**(a)** Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available on the RWPG website at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RWPG meetings and any RWPG committee or subcommittee meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;

(D) approval of revision requests for draft population projections and Water Demand projections;

(E) adoption of the IPP;

(F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;

(G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;

(H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;

(I) adoption of errata pursuant to §357.51(i) of this title (relating to Amendments to Regional Water Plans) to final RWPs;

(J) approval of replacement RWPG members to fill voting and non-voting position vacancies; and

(K) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) approval to submit revision requests to officially adopted Board population and Water Demand projections;

(B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;

(C) approval to submit the Technical Memorandum;

(D) adoption of the final RWP;

(E) approval to substitute Alternative WMSs; and

(F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the



hearing and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

- (A) declarations to pursue simplified planning; and
- (B) major amendments to RWPs.

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

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

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

(3) written comments to be accepted as follows:

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

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

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

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

(A) each adjacent RWPG;

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

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

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

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

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

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

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location in the county courthouse to ensure maximum accessibility to the public during business hours. According to the capabilities of the facility, the RWPG

may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

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

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

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

**Source Note:** The provisions of this §357.21 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 27, 2021, 46 TexReg 3297; amended to be effective May 1, 2022, 47 TexReg 2527

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

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

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

planning studies.

**(b)** The RWP shall contain a separate chapter for the contents of §§357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.45, and 357.50 of this title and shall also contain a separate chapter for the contents of §357.34 and §§357.35, 357.40 and 357.41 of this title for a total of ten separate chapters.

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## Subchapter C – Planning Activities for Needs Analysis and Strategy Recommendations

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### §357.30 – Description of the Regional Water Planning Area

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RWPGs shall describe their RWPA including the following:

- (1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;
- (2) current water use and major water demand centers;
- (3) current groundwater, surface water, and Reuse supplies including major springs that are important for water supply or protection of natural resources;
- (4) Major Water Providers;
- (5) agricultural and natural resources;
- (6) identified water quality problems;
- (7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;
- (8) summary of existing local and regional water plans;
- (9) the identified historic drought(s) of record within the planning area;
- (10) current preparations for drought within the RWPA;
- (11) information compiled by the Board from water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits); and
- (12) an identification of each threat to agricultural and natural resources and a discussion of how that threat will be addressed or affected by the WMSs evaluated in the plan.

**Source Note:** The provisions of this §357.30 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589

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### §357.31 – Projected Population and Water Demands

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**(a)** RWPs shall present projected population and Water Demands by WUG as defined

in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split.

**(b)** RWPs shall present projected Water Demands associated with MWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for the RWPA.

**(c)** RWPs shall evaluate the current contractual obligations of WUGs and WWPs to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use. The evaluation of contractual obligations under this subsection is limited to determining the amount of water secured by the contract and the duration of the contract.

**(d)** Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs shall report how changes in plumbing fixtures would affect projected municipal Water Demands using projections with plumbing code savings provided by the Board or by methods approved by the EA.

**(e)** Source of population and Water Demands. In developing RWPs, RWPGs shall use:

(1) Population and Water Demand projections developed by the EA that shall be contained in the next State Water Plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

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

**(f)** Population and Water Demand projections shall be presented for each Planning Decade for WUGs in accordance with subsection (a) of this section and MWPs in accordance with subsection (b) of this section.

**Source Note:** The provisions of this §357.31 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 1, 2022, 47 TexReg 2527

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### §357.32 – Water Supply Analysis

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**(a)** RWPGs shall evaluate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Source Note:** The provisions of this §357.32 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective May 1, 2022, 47 TexReg 2527

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### **§357.33 – Needs Analysis: Comparison of Water Supplies and Demands**

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

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

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

(d) RWPGs shall perform a secondary water needs analysis for all WUGs and WPGs for which conservation WMSs or direct Reuse WMSs are recommended. This secondary water needs analysis shall calculate the Water Needs that would remain after assuming all recommended conservation and direct Reuse WMSs are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and MWP and decade.

**Source Note:** The provisions of this §357.33 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 1, 2022, 47 TexReg 2527

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### **§357.34 – Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects**

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**(a)** RWPGs shall identify and evaluate potentially feasible WMSs and the WMSPs required to implement those strategies for all WUGs and WWPp with identified Water Needs.

**(b)** RWPGs shall identify potentially feasible WMSs to meet water supply needs identified in §357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures). Strategies shall be developed for WUGs and WWPp. WMS and WMSPs shall be developed for WUGs and WWPp that would provide water to meet water supply needs during Drought of Record conditions.

**(c)** Potentially feasible WMSs may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, seawater desalination, brackish groundwater desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and Drought Management Measures including demand management.

(4) Reuse of wastewater.

(5) Interbasin Transfers of Surface Water.

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code §11.139 (relating to Emergency Authorizations).

**(d)** All recommended WMSs and WMSPs that are entered into the State Water Planning Database shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPp in at least one planning decade such that additional water is available during Drought of Record conditions.

Any other RWPG recommendations regarding permit modifications, operational changes, and/or other infrastructure that are not designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPBs in at least one Planning Decade such that additional water is available during Drought of Record conditions shall be indicated as such and presented separately in the RWP and shall not be eligible for funding from the State Water Implementation Fund for Texas.

**(e)** Evaluations of potentially feasible WMSs and associated WMSPs shall include the following analyses:

(1) For the purpose of evaluating potentially feasible WMSs, the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who shall consider a written request from an RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all WMSs the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during Drought of Record conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used in calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include costs of infrastructure associated with distribution of water within a WUG after treatment, except for specific, limited allowances for direct reuse and conservation WMSs.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations of effects on environmental flows shall include consideration of the Commission's adopted environmental flow standards under 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water). If environmental flow standards have not been established, then environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the State Water Plan after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that WMSs are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other WMSs and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to §357.30(7) of this title (relating to Description of the Regional Water Planning Area) including how that threat will be addressed or affected by the WMSs evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code §11.085(k)(1) for Interbasin Transfers of Surface Water. At minimum, this



consideration shall include a summation of Water Needs in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended WMSs on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended WMSs to current conditions using best available data.

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

**(f)** RWPGs shall evaluate and present potentially feasible WMSs and WMSPs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

**(g)** If an RWPG does not recommend aquifer storage and recovery strategies, seawater desalination strategies, or brackish groundwater desalination strategies it must document the reason(s) in the RWP.

**(h)** In instances where an RWPG has determined there are significant identified Water Needs in the RWPA, the RWP shall include an assessment of the potential for aquifer storage and recovery to meet those Water Needs. Each RWPG shall define the threshold to determine whether it has significant identified Water Needs. Each RWP shall include, at a minimum, a description of the methodology used to determine the threshold of significant needs. If a specific assessment is conducted, the assessment may be based on information from existing studies and shall include minimum parameters as defined in contract guidance.

**(i)** Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending WMSs. RWPGs shall incorporate water conservation planning and drought contingency planning in the RWPA.

(1) Drought Management Measures including water demand management. RWPGs shall consider Drought Management Measures for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the Drought Management Measures on Water Needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If an RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, including potentially applicable best management practices, for each identified Water Need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 and §13.146 (relating to Water Conservation

Plans) apply. The impact of these water conservation practices on Water Needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271 and §13.146.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271 and §13.146. If RWPGs do not adopt a Water Conservation Strategy to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs shall include a Water Conservation Strategy, pursuant to Texas Water Code §11.085(l), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs shall develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs shall develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices. Strategy evaluation in accordance with this section shall include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits).

(3) RWPGs shall recommend Gallons Per Capita Per Day goal(s) for each municipal WUG or specified groupings of municipal WUGs. Goals must be recommended for each planning decade and may be a specific goal or a range of values. At a minimum, the RWPGs shall include Gallons Per Capita Per Day goals based on drought conditions to align with guidance principles in §358.3 of this title (relating to Guidance Principles).

(j) RWPGs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPGs model Water Conservation Plans pursuant to Texas Water Code §11.1271.

**Source Note:** The provisions of this §357.34 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 1, 2022, 47 TexReg 2527

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## §357.35 – Recommended and Alternative Water Management Strategies and Water Management Strategy Projects

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**(a)** RWPGs shall recommend WMSs and the WMSPs required to implement those WMSs to be used during a Drought of Record based on the potentially feasible WMSs evaluated under §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects).

**(b)** RWPGs shall recommend specific WMSs and WMSPs based upon the identification, analysis, and comparison of WMSs by the RWPG that the RWPG determines are potentially feasible so that the cost effective WMSs that are environmentally sensitive are considered and adopted unless an RWPG demonstrates that adoption of such WMSs is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs shall follow processes described in §357.34 of this title. The RWP may include Alternative WMSs evaluated by the processes described in §357.34 of this title.

**(c)** Strategies shall be selected by the RWPGs so that cost effective WMSs, which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.

**(d)** RWPGs shall identify and recommend WMSs for all WUGs and WWPAs with identified Water Needs and that meet all Water Needs during the Drought of Record except in cases where:

(1) no WMS is feasible. In such cases, RWPGs must explain why no WMSs are feasible; or

(2) a Political Subdivision that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.

**(e)** Specific recommendations of WMSs to meet an identified need shall not be shown as meeting a need for a Political Subdivision if the Political Subdivision in question objects to inclusion of the strategy for the Political Subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.

**(f)** Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.

**(g)** RWPGs shall report the following:

(1) Recommended WMSs, recommended WMSPs, and the associated results of all the potentially feasible WMS evaluations by WUG and WWP. If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county.

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

every WUG and MWP. Calculating planning management supply factors is for reporting purposes only.

(3) Fully evaluated Alternative WMSs and associated WMSPs included in the adopted RWP shall be presented together in one place in the RWP.

**Source Note:** The provisions of this §357.35 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589

## Subchapter D – Impacts, Drought Response, Policy Recommendations, and Implementation

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### §357.40 – Impacts of Regional Water Plan

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

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

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

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

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

(4) Third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas pursuant to §357.34(e)(7) of this title;

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

(6) Effects on navigation.

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

**Source Note:** The provisions of this §357.40 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589

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### §357.41 – Consistency with Long-Term Protection of Water Resources, Agricultural Resources, and Natural Resources

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

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

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### §357.42 – Drought Response Information, Activities, and Recommendations

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

**(b)** RWPGs shall conduct an assessment of current preparations for drought within the RWPA. This may include information from local Drought Contingency Plans. The assessment shall include:

(1) A description of how water suppliers in the RWPA identify and respond to the onset of drought; and

(2) Identification of unnecessary or counterproductive variations in drought response strategies among water suppliers that may confuse the public or impede drought response efforts. At a minimum, RWPGs shall review and summarize drought response efforts for neighboring communities including the differences in the implementation of outdoor watering restrictions.

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

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

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

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing Drought Contingency Plans.

**(d)** RWPGs shall collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. At a minimum, the RWP shall include a general description of the methodology used to collect the information, the number of existing and potential emergency interconnects in the RWPA, and a list of which entities are connected to each other. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. Any excepted information collected shall be submitted separately to the EA in accordance with guidance to be provided by EA.

**(e)** RWPGs may provide general descriptions of local Drought Contingency Plans that involve making emergency connections between water systems or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

**(f)** RWPGs may designate recommended and alternative Drought Management Water Management Strategies and other recommended drought measures in the RWP including:

(1) List and description of the recommended Drought Management Water Management Strategies and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended Drought Management WMSs;

(2) List and description of alternative Drought Management WMSs and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative Drought Management WMSs;

(3) List of all potentially feasible Drought Management WMSs that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended Drought Management Measures, if any, that are included in the RWP, including associated triggers if applicable.

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

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

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

(3) all County-Other WUGs.

**(h)** RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

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

(1) Development of, content contained within, and implementation of local Drought Contingency Plans required by the Commission;

(2) Current drought management preparations in the RWPA including:

(A) drought response triggers; and

(B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

**(j)** The RWPGs shall develop region-specific model Drought Contingency Plans.

**Source Note:** The provisions of this §357.42 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective June 28, 2020, 45 TexReg 4211; amended to be effective May 1, 2022, 47 TexReg 2527

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### §357.43 – Regulatory, Administrative, or Legislative Recommendations

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

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

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

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

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

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

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

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

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

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

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**(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 assess the progress of the RWPA in encouraging cooperation between WUGs for the purpose of achieving economies of scale and otherwise incentivizing WMSs that benefit the entire RWPA. This assessment of regionalization shall include:

- (1) The number of recommended WMSs in the previously adopted and current RWPs that serve more than one WUG;
- (2) The number of recommended WMSs in the previously adopted RWP that serve more than one WUG and have been implemented since the previously adopted RWP; and.
- (3) A description of efforts the RWPG has made to encourage WMSs and WMSPs that serve more than one WUG, and that benefit the entire region.

**(c)** 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.

**Source Note:** The provisions of this §357.45 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective June 28, 2020, 45 TexReg 4211

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## Subchapter E – Adoption, Submittal, and Amendments to Regional Water Plans

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

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**(a)** The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (g)(2) of this section, for approval and inclusion in the State Water Plan.

**(b)** Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper



format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG. In the instance of a recommended WMS proposed to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of the IPP, or a letter identifying the WMS in the other region along with an internet link to the IPP, to the RWPG associated with the location of such strategy.

**(c)** The RWPGs shall distribute the IPP in accordance with §357.21(h)(7) of this title (relating to Notice and Public Participation).

**(d)** Within 60 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential Interregional Conflicts by:

(1) identifying the specific recommended WMS from another RWPG's IPP;

(2) providing a statement of why the RWPG considers there to be an Interregional Conflict; and

(3) providing any other information available to the RWPG that is relevant to the Board's decision.

**(e)** The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve Interregional Conflicts.

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

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

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

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

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

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

(1) RWPs shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 TexReg 5797; amended to be effective November 30, 2015, 40 TexReg 8648; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective May 1, 2022, 47 TexReg 2527

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## **§357.51 – Amendments to Regional Water Plans**

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

(1) The petition must state:

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

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

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

(D) the proposed amendment to the approved RWP.

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

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

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

(2) **RWPG Public Hearing.** The RWPG shall hold a public hearing on the amendment pursuant to §357.21(g)(3) of this title. The amendment shall be available for agency and public comment at least seven days prior to the public hearing and 30

days following the public hearing as required by §357.21(g)(3) of this title.

(3) The proposed major amendment:

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

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

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

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

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

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

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

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

(B) does not relate to a new reservoir;

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

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

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

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

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

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

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

**(d) Amendment for Water Planning for a Clean Coal Project.** An amendment to an

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

- (1) the amendment does not significantly change the RWP; or
- (2) the amendment does not adversely affect other WMSs in the RWP.

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

**(f)** In the instance of a substitution of an Alternative WMS or a proposed amendment with a recommended WMS to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the substitution or proposed amendment to the EA, a copy of the substitution or proposed amendment to the RWPG for the location of such strategy. The provisions of sections 357.50(d), (e), (f), and (h), 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 (relating to General Regional Water Planning Group Responsibilities and Procedures), an RWPG shall amend an adopted RWP to remove an infeasible recommended WMS or WMSP, as defined by Texas Water Code §16.053(h)(10). The RWPG will follow the amendment processes in accordance with subsections (b), (c), or (e) of this section. An amendment for infeasible recommended WMSs or WMSPs shall be submitted to the Board by a date established by the EA. The amendment shall summarize the project components and address why they were determined to be infeasible. The amendment must also summarize any changes to unmet needs as a result of removing the infeasible WMS or WMSP. Subsequent amendments during the planning cycle for infeasible recommended WMS or WMSP may occur at the discretion of the RWPG based upon information presented to the RWPG by project sponsors.

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

**(i) Errata to RWPs.** RWPGs may adopt errata to the final RWP to correct minor, non-substantive errors identified after adoption of the final RWP but prior to adoption of the corresponding State Water Plan. Before adopting errata to a final RWP, the RWPG must provide public notice and receive comments in accordance with §357.21(g)(1) of this title. Upon adoption of the errata, the RWPG shall submit to the EA an errata package containing revised pages of the RWP and public comments received. The EA

will notify the RWPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

**Source Note:** The provisions of this §357.51 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective November 30, 2015, 40 TexReg 8648; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective May 1, 2022, 47 TexReg 2527

## Subchapter F – Consistency and Conflicts in Regional Water Plans

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### §357.60 – Consistency of Regional Water Plans

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

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

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

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

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

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

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

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

**Source Note:** The provisions of this §357.60 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589

### §357.61 – Intraregional Conflicts in Development of Regional Water Plans

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

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

### §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 RWPAs involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(h) of this title (relating to Notice and Public Participation) in the RWPAs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPAs 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).

**Source Note:** The provisions of this §357.62 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective November 30, 2015, 40 TexReg 8648; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158; amended to be effective May 1, 2022, 47 TexReg 2527

### **§357.63 – Failure of a Regional Water Plan to Meet Regional Water Planning Requirements**

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

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

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

### **§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.

**Source Note:** The provisions of this §357.64 adopted to be effective August 12, 2012, 37 TexReg 5797; amended to be effective December 8, 2016, 41 TexReg 9589; amended to be effective April 11, 2018, 43 TexReg 2158

## CHAPTER 358 – STATE WATER PLANNING GUIDELINES

### Subchapter A – State Water Plan Development

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#### §358.1 – Applicability

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

**Source Note:** The provisions of this §358.1 adopted to be effective August 12, 2012, 37 TexReg 5812

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## §358.2 – Definitions

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

- (1) Board--The Texas Water Development Board.
- (2) Commission--The Texas Commission on Environmental Quality.
- (3) Regional water plan (RWP)--The plan adopted or amended by a regional water planning group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and Chapter 357 of this title (relating to Regional Water Planning).
- (4) Regional water planning area--Area designated pursuant to Texas Water Code §16.053 and Chapter 357 of this title.
- (5) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code §16.053 and Chapter 357 of this title.
- (6) River and stream segments of unique ecological value--Those river or stream segments that may be identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan based on the following criteria:
  - (A) Biological function--stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;
  - (B) Hydrologic function--stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;
  - (C) Riparian conservation areas--stream segments which are fringed by significant areas in public ownership including state and federal refuges, wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas managed for conservation purposes under a governmentally approved conservation plan;
  - (D) High water quality/exceptional aquatic life/high aesthetic value--stream segments and spring resources that are significant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or
  - (E) Threatened or endangered species/unique communities--sites along stream where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species; and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.
- (7) Site of unique value for construction of reservoirs--Those sites identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan where:
  - (A) Site-specific reservoir development is recommended as a specific water management strategy or as a unique reservoir site in an adopted regional water plan; or
  - (B) The location, hydrologic, geologic, topographic, water availability, water quality, environmental, cultural, and current development characteristics, or

other pertinent factors make the site uniquely suited for reservoir development to provide water supply for:

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

(8) State drought preparedness plan--A plan, separate from the state water plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(9) State drought response plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the state water plan and the state drought preparedness plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

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

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

**Source Note:** The provisions of this §358.2 adopted to be effective August 12, 2012, 37 TexReg 5812

### §358.3 – Guidance Principles

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

(1) The state water plan shall provide for the preparation for and response to drought conditions.

(2) The regional water plans and state water plan shall serve as water supply plans under drought of record conditions. RWPGs may, at their discretion, plan for drought conditions worse than the drought of record.

(3) Consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources.

(4) Regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the affected regional water planning areas and the state.

(5) Regional water plans shall include identification of those policies and action that may be needed to meet Texas' water supply needs and prepare for and respond to drought conditions.

(6) RWPG decision-making shall be open to and accountable to the public with decisions based on accurate, objective and reliable information with full dissemination of planning results except for those matters made confidential by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Source Note:** The provisions of this §358.3 adopted to be effective August 12, 2012, 37 TexReg 5812; amended to be effective November 30, 2015, 40 TexReg 8660; amended to be effective May 1, 2022, 47 TexReg 2547

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## §358.4 – Guidelines

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(a) The executive administrator shall prepare, develop, and formulate the state water

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

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

- (1) Basis for planning, including sections on planning history, Texas water statutes, rules, regulations, and Texas' water supply institutions;
- (2) Description of methods used for projecting future population and water demands for municipal and associated commercial and institutional uses, and projecting future water demands for manufacturing, irrigation, steam electric power generation, mining, and livestock water uses;
- (3) Description of methods to address water quality problems related to water supply, to ensure public health, safety and welfare, to further economic growth, to protect agricultural and natural resources, to determine water supply availability, and to address drought response planning;
- (4) Description of future conditions which shall, at a minimum, include:
  - (A) Demands for water;
  - (B) Supplies currently available;
  - (C) Comparison of water demand and supply to identify surpluses or needs of water;
  - (D) Social and economic impact of not meeting needs;
  - (E) Recommended solutions to meet needs;
  - (F) Needs for which no feasible water management strategy exists; and
  - (G) Descriptions in subparagraphs (A) - (F) of this paragraph shall be presented for each county and basin by the major providers of water for municipal uses and for the following water use categories: municipal and associated commercial and institutional uses; manufacturing; irrigation; steam electric power generation; mining; and livestock;
- (5) Consideration of recommendations of river and stream segments of unique ecological value and sites of unique value for construction of reservoirs to the legislature for potential protection;
- (6) Regulatory, administrative, and legislative recommendations that the Board believes are needed and desirable to facilitate the orderly development, management, and conservation of water resources, to facilitate more voluntary water transfers, and the preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the entire state;
- (7) The progress in meeting future water needs, including an evaluation of

implementation of all water management strategies and projects that were recommended in the previous state water plan and projects funded by the Board;

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

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

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

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

**Source Note:** The provisions of this §358.4 adopted to be effective August 12, 2012, 37 TexReg 5812; amended to be effective February 14, 2018, 43 TexReg 777; amended to be effective May 1, 2022, 47 TexReg 2547

## Subchapter B – Data Collection

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### §358.5 – Groundwater and Surface Water Use Surveys

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The executive administrator shall conduct surveys at least annually of persons and/or entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes to gather data to be used for long-term water supply planning. The survey instrument will identify which responses are required and which are optional. The executive administrator will send the surveys to the appropriate recipients by first-class mail, electronic mail, or both. Recipients shall return the survey to the executive administrator within 60 days of the postmark date or electronic mail sent date. Surveys may be returned to the executive administrator electronically. The executive administrator shall determine if the survey is administratively complete. A survey is administratively complete if all required responses are provided. Incomplete surveys will be returned to the recipient, who will have 60 days from the new postmark date or electronic mail sent date to complete the items found deficient and return the survey to the executive administrator. A person or entity that fails to return their survey within 60 days or correct a survey that is not administratively complete within 60 days is ineligible for funding from board programs. Ineligibility will remain until the incomplete survey instruments are submitted to the executive administrator and determined to be administratively complete. Further, a person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor, pursuant to Texas Water Code §16.012(m).

**Source Note:** The provisions of this §358.5 adopted to be effective January 2, 2002, 26 TexReg 11025; amended to be effective December 6, 2004, 29 TexReg 11366

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## §358.6 – Water Loss Audits

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**(a) Definitions.** Unless otherwise indicated, in this section the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

(5) Category or Categories--A category of retail public utility as listed in Texas Water Code §16.0121(c).

(6) Executive Administrator--The executive administrator of the Board.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--The number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

(12) Unavoidable annual real loss--A unique number calculated for each utility based on the number of connections, miles of distribution lines, and operating pressure.

**(b)** A retail public utility that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.



(3) The water loss audit must be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

(4) Effective January 1, 2019, the water loss audit must be performed by a person who has completed water loss audit training developed by the executive administrator. The executive administrator will make such training available without charge on the agency website, and may also provide such training in person or by video.

**(c)** The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided and the audit is completed by a person who has been trained to conduct water loss auditing as described in paragraph (4) of subsection (b). In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

**(d)** A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

**(e)** The following thresholds shall apply to the indicated categories of retail public utility:

(1) For a retail public utility with a population of more than 10,000:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than three times the utility's unavoidable annual real loss.

(2) For a retail public utility with a population of 10,000 or fewer and a service connection density more than or equal to 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 50 gallons per connection per day.

(3) For a retail public utility with a population of 10,000 or fewer and a service connection density less than 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per mile per day must be less than 1,600 gallons per mile per day.

(4) For a utility that has a volume of wholesale water sales that flow through the retail water distribution system:

(A) Apparent loss expressed as gallons per connection per day, determined using a modified calculation that includes the wholesale volume, must be less than the utility's allowed apparent loss.

(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than three times the utility's unavoidable annual real loss.

**(f)** If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

**Source Note:** The provisions of this §358.6 adopted to be effective December 6, 2004, 29 TexReg 11366; amended to be effective February 15, 2012, 37 TexReg 708; amended to be effective February 12, 2014, 39 TexReg 769; amended to be effective December 10, 2014, 39 TexReg 9592; amended to be effective May 25, 2016, 41 TexReg 3743; amended to be effective February 14, 2018, 43 TexReg 777

## CHAPTER 355 – RESEARCH AND PLANNING FUND

### Subchapter C – Regional Water Planning Grants

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#### §355.90 – Applicability and Definitions

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

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

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

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

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

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

(5) Political subdivision--A city, county, district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code

Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

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

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

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

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

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

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

**Source Note:** The provisions of this §355.90 adopted to be effective August 12, 2012, 37 TexReg 5795

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### **§355.91 – Notice of Funds and Submission and Review of Applications**

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**(a)** The EA will notify the 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. An RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted bylaws.

**(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 of professional services and enter into the contracts necessary for regional water planning.

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

**(d)** The application must include: the name of the political subdivision; citation to the laws under which the political subdivision was created and is operating, specific citation of all laws providing authority to develop and implement a regional water plan; the amount of funding requested; and any other relevant information requested

by the EA.

(e) 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.

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

(1) degree to which proposed planning does not duplicate previous or ongoing water planning;

(2) project budget;

(3) scope of work;

(4) the relative need of the political subdivision for the money based on the scope of work and cost to develop the regional water plan;

(5) the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and

(6) the degree to which regional water planning by the RWPG will address the water supply needs in the regional water planning area.

**Source Note:** The provisions of this §355.91 adopted to be effective August 12, 2012, 37 TexReg 5795; amended to be effective April 11, 2018, 43 TexReg 2156; amended to be effective May 27, 2021, 46 TxReg 3296

## §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) analyses of benefits and costs of water management strategies are not eligible for funding, unless the EA, at his or her discretion, has deemed an analysis necessary and appropriate or specifically authorizes reimbursement. In determining whether to authorize reimbursement for a cost benefit analysis for a water management strategy, the EA will consider:

(A) whether 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);

(B) whether these analyses are needed to determine the selection of the water management strategy;

(C) whether the analysis is for strategies that serve the same demand, but the costs and benefits differ significantly among the strategies; and

(D) the overarching benefits to the state when determining whether to provide such funding.

**(b)** Costs associated with participation on an RWPG and certain administrative activities by the RWPG's Political Subdivision and RWPG members are not eligible for funding. Ineligible costs include, but are not limited to:

(1) compensation for the time or expenses of RWPGs members' service on or for the RWPG, including attendance at RWPG meetings and hearings;

(2) costs for training;

(3) costs associated with the development of an application for a regional water planning grant;

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

(5) costs of administering the regional water planning grant and associated contracts.

**(c)** Funding Administrative Costs. The following administrative costs are eligible for funding as specifically limited by the expense budget included in the regional water planning grant contract between the TWDB and the RWPG's political subdivision and 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 providing copies of information for the public and for members of the RWPGs as needed for the efficient performance of planning work;

(4) direct costs, not including personnel costs, of public notice postings including maintaining a website and for postage for mailing notices of public meetings and hearings, including in newspapers pursuant to Chapter 357 of this title (relating to Regional Water Planning); and

(5) the RWPG's political subdivision's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RWPG meetings and hearings, including time and direct expenses for their support of and attendance at such RWPG meetings and hearings.

**(d) Subcontracting.** An RWPG through the political subdivision'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.

**Source Note:** The provisions of this §355.92 adopted to be effective August 12, 2012, 37 TexReg 5795; amended to be effective April 11, 2018, 43 TexReg 2156; amended to be effective May 27, 2021, 46 TexReg 3296

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### **§355.93 – Board Consideration of Applications; Applicant’s Responsibilities; and Contract**

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**(a)** The EA shall provide a summary of regional water planning funding applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicants of the time and place of such meeting.

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

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

**(d)** The contracts and subcontracts for regional planning funds shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA;
- (3) the total amount of money to be paid from the research and planning fund under the contract and, as determined by the EA, subdivided into task budgets;
- (4) the time for completion; and
- (5) any other terms and conditions required by the EA or agreed to by the contracting parties.

**Source Note:** The provisions of this §355.93 adopted to be effective August 12, 2012, 37 TexReg 5795; amended to be effective May 27, 2021, 46 TexReg 3296

## || TEXAS WATER CODE, TITLE 2, SUBTITLE C ||

### CHAPTER 16 – PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT

#### Subchapter C – Planning

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##### §16.051 – State Water Plan: Drought, Conservation, Development, and Management; Effect of Plan

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(a) Not later than January 5, 2002, and before the end of each successive five-year period after that date, the board shall prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053. The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.

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

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

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

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

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

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

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

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

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

(d) The board, in coordination with the commission, the Department of Agriculture, and the Parks and Wildlife Department, shall adopt by rule guidance principles for the state water plan which reflect the public interest of the entire state. When adopting guidance principles, due consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources. The board shall review and update the

guidance principles, with input from the commission, the Department of Agriculture, and the Parks and Wildlife Department, as necessary but at least every five years to coincide with the five-year cycle for adoption of a new water plan as described in Subsection (a).

**(e)** On adoption the board shall deliver the state water plan to the governor, the lieutenant governor, and the speaker of the house of representatives and present the plan for review to the appropriate legislative committees. The plan shall include legislative recommendations that the board believes are needed and desirable to facilitate more voluntary water transfers. The plan shall identify river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the board recommends for protection under this section.

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

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

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

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

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

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## **§16.052 – Interregional Planning Council**

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**(a)** The board, at an appropriate time in each five-year cycle for the adoption of a new state water plan, shall appoint an interregional planning council. The members of the council serve until a new state water plan is adopted.

**(b)** The council consists of one member of each regional water planning group. Each



regional water planning group shall nominate one or more members for appointment to the council, and the board shall consider the nominations in making appointments to the council.

**(c)** The purposes of the council are to:

- (1) improve coordination among the regional water planning groups, and between each regional water planning group and the board, in meeting the goals of the state water planning process and the water needs of the state as a whole;
- (2) facilitate dialogue regarding water management strategies that could affect multiple regional water planning areas; and
- (3) share best practices regarding operation of the regional water planning process.

**(d)** The council shall:

- (1) hold at least one public meeting; and
- (2) prepare a report to the board on the council's work.

### 16.053 – Regional Water Plans

**(a)** The regional water planning group in each regional water planning area shall prepare a regional water plan, using an existing state water plan identified in Section 16.051 of this code and local water plans prepared under Section 16.054 of this code as a guide, if present, that provides for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of that particular region.

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

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

Department of Agriculture, and the State Soil and Water Conservation Board shall serve as ex officio members of each regional water planning group.

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

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

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

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

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the most recent deadline for the board to adopt the state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan; provided, however, that if no groundwater conservation district exists within the area of the regional water planning group, the regional water planning group shall determine the supply of groundwater for regional planning purposes; the Texas Water Development Board shall review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group without a groundwater conservation district in its area is physically compatible, using the board's groundwater availability models, with the desired future conditions adopted under Section 36.108 for the relevant aquifers in the groundwater management area that are regulated by groundwater conservation districts;

(3) identifies:

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

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

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

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

(E) unnecessary or counterproductive variations in specific drought response strategies, including outdoor watering restrictions, among user groups in the regional water planning area that may confuse the public or otherwise impede drought response efforts;

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

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

(A) any existing water or drought planning efforts addressing all or a portion of the region and potential impacts on public health, safety, or welfare in this state;

(B) approved groundwater conservation district management plans and

other plans submitted under Section 16.054;

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

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

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

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

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

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

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

(J) opportunities for and the benefits of developing large-scale desalination facilities for:

(i) marine seawater that serve local or regional entities; and

(ii) brackish groundwater that serve local or regional brackish groundwater production zones identified and designated under Section 16.060(b)(5);

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

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

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

(9) includes information on:

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

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

(10) if the regional water planning area has significant identified water needs, provides a specific assessment of the potential for aquifer storage and recovery projects to meet those needs;

(11) sets one or more specific goals for gallons of water use per capita per day in each decade of the period covered by the plan for the municipal water user groups in the regional water planning area; and

(12) assesses the progress of the regional water planning area in encouraging cooperation between water user groups for the purpose of achieving economies of scale and otherwise incentivizing strategies that benefit the entire region.

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

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

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

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

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

**(h)** (1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location 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 in the plan or provisions that should be considered for inclusion in the plan.

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

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location readily accessible to the public within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

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

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

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

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

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

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

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

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

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

(B) mailed to:

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

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

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

(iv) each retail public utility that:

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

(b) receives water from the regional water planning area; and

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

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

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

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

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

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

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. If, after the regional water plan has been approved by the board, the plan includes a water management strategy or project that ceases to be feasible, the regional water planning group shall amend the plan to exclude that water management strategy or project and shall consider amending the plan to include a feasible water management strategy or project in order to meet the need that was to be addressed by the infeasible water management strategy or project. For purposes of this subdivision, a water management strategy or project is considered infeasible if the proposed sponsor of the water management strategy or project has not taken an affirmative vote or other action to make expenditures necessary to construct or file applications for permits required in connection with the implementation of the water management strategy or project under federal or state law on a schedule that is consistent with the completion of the implementation of the water management strategy or project by the time the water management strategy or project is projected by the regional water plan or the state water plan to be needed. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

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

(12) Each regional water planning group and any committee or subcommittee of a regional water planning group are subject to Chapters 551 and 552, Government Code.

**(i)** The regional water planning groups shall submit their adopted regional water plans to the board by January 5, 2001, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region or for any other changes that the members of the planning group believe would improve the water planning process. Subsequent regional water plans shall be submitted at least every five years thereafter, except that a regional water planning group may elect to implement simplified planning, no more often than every other five-year planning cycle, and in accordance with guidance to be provided by the board, if the group determines that, based on its own initial analyses using updated groundwater and surface water availability information, there are no significant changes to the water availability, water supplies, or water demands in the regional water planning area. At a minimum, simplified planning will require updating groundwater and surface water availability values in the regional water plan, meeting any other new statutory or other planning requirements that come into effect during each five-year planning cycle, and formally adopting and submitting the regional water plan for approval. Public participation for revised regional plans shall follow the procedures under Subsection (h).

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

- (1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan;
- (2) beginning January 5, 2002, the board:

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

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

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

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

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

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

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

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

**(p)** If a groundwater conservation district files a petition with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section 36.1071 and an approved state water plan, the development board shall provide technical assistance to and facilitate coordination between the district and the involved region to resolve the conflict. Not later than the 45th day after the date the groundwater conservation district files a petition with the development board, if the conflict has not been resolved, the district and the involved region shall mediate the conflict. The district and the involved region may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved region cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed as provided by Subsections (p-1) and (p-2).

**(p-1)** If the development board determines that resolution of the conflict requires a revision of an approved regional water plan, the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by

the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.

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

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

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

**(q)** Repealed by Acts 2021, 87th Leg., R.S., Ch. 68 (H.B. 1905), Sec. 8, eff. September 1, 2021.

*Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1200 (H.B. 578), Sec. 1:*

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

*Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1097 (H.B. 2201), Sec. 8 and amended by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.15:*

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

- (1) significantly change the regional water plan, as reasonably determined by the board; or
- (2) adversely affect other water management strategies in the regional water plan.



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## §16.054 – Local Water Planning

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

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

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

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

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

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

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

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

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

# || TEXAS WATER CODE, Selected Statutes and Statute Excerpts Relevant to Regional Water Planning ||

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## Chapter 5

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### Sec. 5.001. DEFINITIONS. (excerpt)

In this chapter:

(4) "Clean coal project" means the installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

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## Chapter 10

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### Sec. 10.001. DEFINITIONS. (excerpt)

In this chapter:

(4) "Council" means the Water Conservation Advisory Council.

### Sec. 10.010. POWERS AND DUTIES OF COUNCIL. (excerpt)

The council shall:

(6) monitor the implementation of water conservation strategies by water users included in regional water plans

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## Chapter 11

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### Sec. 11.002. DEFINITIONS.

#### Sec. 11.085. INTERBASIN TRANSFERS. (excerpt)

(k) In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall weigh the effects of the proposed transfer by considering:

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years;

(l) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as

determined by the commission based on consideration of the factors described by Subsection (k); and

(2) the applicant for the interbasin transfer has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

**Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS. (excerpt)**

(a) The commission shall require from an applicant for a new or amended water right the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section 11.002, of this code.

(b) The commission shall require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, consistent with the appropriate approved regional water plan, that adopts reasonable water conservation measures as defined by Subdivision (8)(B), Section 11.002, of this code. The requirement for a water conservation plan under this section shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(c) Beginning May 1, 2005, all water conservation plans required under this section must include specific, quantified 5-year and 10-year targets for water savings. The entity preparing the plan shall establish the targets. Targets must include goals for water loss programs and goals for municipal use in gallons per capita per day.

(d) The commission and the board jointly shall identify quantified target goals for water conservation that water suppliers and other entities may use as guidelines in preparing water conservation plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and board jointly shall develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

**Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS.**

(a) The commission shall by rule require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

(b) The wholesale and retail public water suppliers and irrigation districts shall provide an opportunity for public input during preparation of their drought contingency plans and before submission of the plans to the commission.

(c) By May 1, 2005, a drought contingency plan required by commission rule adopted under this section must include specific, quantified targets for water use reductions to be achieved during periods of water shortages and drought. The entity preparing the plan shall establish the targets.

**(d)** The commission and the board by joint rule shall identify quantified target goals for drought contingency plans that wholesale and retail public water suppliers, irrigation districts, and other entities may use as guidelines in preparing drought contingency plans. Goals established under this subsection are not enforceable requirements.

**(e)** The commission and the board jointly shall develop model drought contingency programs for different types of water suppliers that suggest best management practices for accomplishing the highest practicable levels of water use reductions achievable during periods of water shortages and drought for each specific type of water supplier.

**Sec. 11.139. EMERGENCY AUTHORIZATIONS. (excerpt)**

**(a)** Except as provided by Section 11.148 of this code, the commission may grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication after notice to the governor for an initial period of not more than 120 days if the commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. Such emergency action may be renewed once for not longer than 60 days.

**Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND INSTREAM USES.**

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

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

**Chapter 13**

**Sec. 13.146. WATER CONSERVATION PLAN.**

The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to:

- (1) submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies;
- (2) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and
- (3) identify, in writing, the water conservation coordinator to the executive administrator of the board.

## Sec. 13.506. PLUMBING FIXTURES.

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### Chapter 15

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#### Sec. 15.401. PROGRAM CREATION.

The research and planning program is created to provide money for research into and planning of the proper conservation, management, and development of the state's water resources, for regional planning by political subdivisions, for facility engineering in economically distressed areas, and for flood control planning by political subdivisions. The program may also provide money for research and planning by Texas political subdivisions related to the proper conservation, management, and development of water resources of areas outside Texas if such research or planning will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas.

#### Sec. 15.4061. FUNDING FOR REGIONAL WATER PLANS. (excerpt)

(a) The board may enter into contracts with political subdivisions designated as representatives of a regional water planning group under Section 16.053(c) of this code to pay from the research and planning fund all or part of the cost of developing or revising regional water plans as defined in Section 16.053 of this code.

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### Chapter 16

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## Sec. 16.012. STUDIES, INVESTIGATIONS, SURVEYS.

#### Sec. 16.0121. WATER AUDITS. (excerpt)

(a) In this section, "retail public utility" has the meaning assigned by Section 13.002.

(b) Except as provided by Subsection (b-1), a retail public utility providing potable water shall perform and file with the board an annual water audit computing the utility's system water loss during the preceding year.

(b-1) A retail public utility providing potable water that does not receive from the board financial assistance and is providing service to 3,300 or fewer connections shall perform and file with the board every five years a water audit computing the utility's most recent annual system water loss.

**Sec. 16.051. STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN. (see p.51)**

**Sec. 16.053. REGIONAL WATER PLANS. (see p.53)**

**Sec. 16.054. LOCAL WATER PLANNING.**

**Sec. 16.055. DROUGHT RESPONSE PLAN.**

**Sec. 16.0551. STATE DROUGHT PREPAREDNESS PLAN.**

**Sec. 16.145. INTERREGIONAL WATER SUPPLY PROJECTS.**

**(a)** The board shall identify, establish selection criteria for, and issue a request for proposals for water supply projects that benefit multiple water planning regions. Selection criteria established under this section must prioritize projects that:

- (1) maximize the use of private financial resources;
- (2) combine the financial resources of multiple water planning regions; and
- (3) have a substantial economic benefit to the regions served by:
  - (A) affecting a large population;
  - (B) creating jobs in the regions served; and
  - (C) meeting a high percentage of the water supply needs of the water users

served by the project.

**(b)** The board and the commission shall enter into a memorandum of understanding for the expedited approval of permits for projects selected under this section.

**Sec. 16.402. WATER CONSERVATION PLAN REVIEW.**

**Sec. 16.403. WATER USE REPORTING.**

**Chapter 35**

**Sec. 35.019. WATER AVAILABILITY. (excerpt)**

**(a)** The commissioners court of a county in a priority groundwater management area may adopt water availability requirements in an area where platting is required if the court determines that the requirements are necessary to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply.

**Chapter 36**

**Sec. 36.002. OWNERSHIP OF GROUNDWATER.**

**(a)** The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

**(b)** The groundwater ownership and rights described by this section entitle the

landowner, including a landowner's lessees, heirs, or assigns, to:

(1) drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence; and

(2) have any other right recognized under common law.

**(b-1)** The groundwater ownership and rights described by this section do not:

(1) entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of that landowner's land; or

(2) affect the existence of common law defenses or other defenses to liability under the rule of capture.

**(c)** Nothing in this code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by this section.

**(d)** This section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.

**(e)** This section does not affect the ability to regulate groundwater in any manner authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District; and

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District.

### **Sec. 36.1071. MANAGEMENT PLAN. (excerpt)**

**(a)** Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a management plan that addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;

(3) controlling and preventing subsidence;

(4) addressing conjunctive surface water management issues;

(5) addressing natural resource issues;

(6) addressing drought conditions;

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing the desired future conditions adopted by the district under

Section 36.108.

**(b)** The management plan, or any amendments to the plan, shall be developed using the district's best available data and forwarded to the regional water planning group for use in their planning process.

**Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (excerpt)**

**(d)** Not later than May 1, 2021, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions.

**(d-1)** After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

**(d-2)** The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the



public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the close of the public comment period, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

### **Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS.**

#### **Sec. 36.1084. MODELED AVAILABLE GROUNDWATER.**

**(a)** The Texas Water Development Board shall require the districts in a management area to submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):

- (1) the desired future conditions adopted under Section 36.108;
- (2) proof that notice was posted for the joint planning meeting; and
- (3) the desired future conditions explanatory report.

**(b)** The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts.

#### **Sec. 36.1132. PERMITS BASED ON MODELED AVAILABLE GROUNDWATER.**

**(a)** A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.

**(b)** In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

- (1) the modeled available groundwater determined by the executive administrator;
- (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
- (3) the amount of groundwater authorized under permits previously issued by the district;
- (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
- (5) yearly precipitation and production patterns.

**(c)** In developing the estimate of exempt use under Subsection (b)(2), the executive administrator shall solicit information from each applicable district.

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## Miscellaneous

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Texas Open Meeting Act, Texas Government Code, Chapter 551

Texas Open Meeting Act training from the Texas Attorney General's office:

<https://texasattorneygeneral.gov/og/oma-training>

Texas Public Information Act, Texas Government Code, Chapter 552

Texas Public Information Act training from the Texas Attorney General's office:

<https://www.texasattorneygeneral.gov/og/pia-training>

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

Notes:

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1700 N. Congress Ave.  
P.O. Box 13231  
Austin, Texas 78711-3231