

### Some notes regarding the Prepublication Draft Rule Revisions

- These preliminary proposed revisions were drafted for the purpose of soliciting initial stakeholder feedback.
- Formal, published draft rule revisions will be issued in early 2012.
- Most of the existing rule content remains in some form within these proposed revised rules but with significant overall reorganization for simplification and or clarity.
- The subchapter numbering convention is temporary for draft purposes only.
- Please disregard formatting inconsistencies.
- Much of the reorganization of these draft rules reflects how regional water planning groups already perform the associated work and presented information in the previous regional water plans.
- Content that is proposed for removal from the existing rules is referenced in footnotes and or described on the last page of this document.

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For convenience, and although there was much consolidation and rearrangement of nearly all existing rule content throughout this proposed draft revision, staff has highlighted portions of the resulting draft document with 'boxes' to highlight certain content that staff considered of particular interest to stakeholders\*, as follows:

#### **DOUBLE SOLID OUTLINE:**

*entirely new requirement*

#### **SINGLE SOLID OUTLINE:**

*significant new language or very significantly reworking/simplification (mostly) of existing requirements*

#### **DOTTED OUTLINE:**

*slightly modified, reworked, clarified and or simplified material*

A boxed subchapter title indicates that there are changes throughout the entire subchapter.

**\*Please note that these highlighted/boxed sections do not include all changes included in these proposed rule revisions.**

**Prepublication Draft Revisions**  
**357 REGIONAL WATER PLANNING GUIDELINES**  
*(was formerly 31 TAC 357)*

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### §357.A. Definitions and Acronyms<sup>1</sup>

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

- (1) Alternative water management strategy – a fully evaluated water management strategy labeled as such and that can be substituted into a regional water plan in the event that a recommended water management strategy is no longer recommended.
- (2) Availability – Maximum amount of water available from a source during the drought of record, regardless of whether the supply is physically or legally available to water user groups.
- (3) Board – The Texas Water Development Board (TWDB)
- (4) Collective Reporting Unit: A Collective Reporting Unit is a grouping of utilities located in counties having five or more utilities, each providing more than 280 acre-feet per year. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common wholesale water providers, having common sources, or other appropriate associations.
- (5) Commission – the Texas Commission on Environmental Quality (TCEQ)
- (6) County-other – An aggregation of residential, commercial, and institutional water users in cities with less than 500 people or utilities that provide less than an average of 250,000 gallons per day, as well as unincorporated rural areas in a given county.
- (7) Drought contingency plan – a strategy or combination of strategies for temporary supply management and demand management responses by local entities to temporary and potentially recurring water supply shortages and other water supply emergencies as required by TCEQ.
- (8) Drought management measures – demand management activities to be implemented during drought that may presented as water management strategies.
- (9) Drought of record – The period of time when natural hydrological conditions provided the least amount of water supply.
- (10) Executive administrator (EA) – The executive administrator of the board or a designated representative.
- (11) Existing water supply – Maximum amount of water available from existing sources for use during drought of record conditions that is physically and legally available for use by a water user group.
- (12) Firm Yield – Maximum water volume a reservoir can provide each year under a repeat of the drought of record using reasonable sedimentation rates and assuming that all senior water rights will be totally utilized.
- (13) Intra-regional conflict – A conflict between two identified, quantified, and recommended water management strategies in the same adopted regional water plan that rely upon the same source of supply and would create an over-allocation of that source.
- (14) Initially Prepared Plan – Draft regional water plans (IPP).
- (15) 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 Tex. Water Code, chapter 67.

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<sup>1</sup> Currently TAC 31 §357.2. Reworked with additional definitions added and acronyms defined for use throughout document.

- (16) Regional water plan (RWP) – The plan adopted or amended by a regional water planning group pursuant to Tex. Water Code, §16.053 and this chapter.
- (17) Regional water planning area (RWPA)
- (18) Regional water planning group (RWPG)
- (19) Retail public utility – Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operation, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
- (20) Safe Yield - The annual amount of firm water that can be withdrawn from a reservoir for a period of time longer than the drought of record.
- (21) 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.
- (22) 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.
- (23) State Water Plan – The most recent state water plan adopted by the Board under the Texas Water Code, Chapter 16.
- (24) Water conservation plan – A plan developed by an entity under the provisions of 30 TAC Chapter 288 (relating to water conservation plans, drought contingency plans, Guidelines and Requirements) or 31 TAC Chapter 363.15 (relating to financial assistance programs, required conservation plan).
- (25) 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.
- (26) Water User Group (WUG) – Identified user or group of users for which water demands and water supplies have been identified and analyzed and plans developed to meet water needs. Water user groups are defined at the county level for the manufacturing, irrigation, livestock, steam-electric power generation, and mining water use categories. Municipal water user groups include (a) incorporated cities and selected Census Designated Places with a population of 500 or more; (b) individual or groups of selected water utilities serving smaller municipalities or unincorporated areas; and (c) rural areas not included in a listed city or utility, aggregated for each county.
- (27) Wholesale water provider – Any person or entity, including river authorities and irrigation districts, that has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan. The regional water planning groups shall include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan.

### 357.B. Designations<sup>2</sup>

- a) The board shall, no later than September 1, 1998, designate areas for which regional water plans shall be developed, taking into consideration factors such as:
- 1)River basin and aquifer delineations;
  - 2)Water utility development patterns;
  - 3)Socioeconomic characteristics;
  - 4)Existing regional water planning areas;
  - 5)Political subdivision boundaries;
  - 6)Public comment; and
  - 7)Other factors the board deems relevant.
- b) The board shall review and update the designations of RWPA's as necessary but at least every five years, on its own initiative or upon recommendation of the executive administrator. The board shall provide notice of its intent to amend the designations of RWPA's 30 days before making any change by publishing notice of the proposed change in the Texas Register and by mailing notice of the proposed change 30 days before making any change to the affected RWPGs, 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 RWPA's 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 Texas Commission on Environmental Quality, and to each county judge of a county located in whole or in part in the RWPA's proposed to be impacted. After the notice period, the board shall hold a public hearing at a location to be determined by the board before making any changes to the designation of a RWPA, and may thereafter take actions to change the RWPA.
- c) After an initial coordinating body is named by the board, the RWPGs shall adopt, by a vote of two-thirds of the members of the RWPG, bylaws that are consistent with provisions of this chapter. The RWPG shall provide copies of its bylaws and any revisions thereto to the executive administrator. Within 30 days after the board names members of the initial coordinating body, the executive administrator shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG may consider. The bylaws adopted by the RWPG shall at a minimum address the following elements:
- (1) definition of a quorum necessary to conduct business;
  - (2) method to be used to approve items of business including adoption of regional water plans or amendments thereto;

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<sup>2</sup> Combination of current TAC 31 §357.3 and 357.4. A significant portion of the current 357.3 and 357.4 rules is proposed to be removed from agency rules because the associated language is largely duplicative of statutory language and refers to a Board procedure to constitute RWPGs that may be captured and retained in a separate, agency procedure document. Other rule language was modified to simplify and allow flexibility regarding RWPG membership and coordination with others.

- (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) The board may not approve funding under Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants) for a regional water planning area until a copy of the adopted bylaws of the RWPG that meet the requirements of subsection (c) of this subchapter has been filed with the executive administrator.
- e) RWPGs shall maintain at a minimum of one each of the following representatives as voting members on the RWPG at all times:
- 1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2-12) of this subsection other than as a normal consumer;
  - 2) Counties, defined as the county governments for the 254 counties in Texas;
  - 3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;
  - 4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;
  - 5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;
  - 6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;
  - 7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 100 employees or less than \$1 million in gross annual receipts;
  - 8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;
  - 9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;
  - 10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, § 52(b)(1) and (2), or Article XVI, §59 including

districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

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

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

- f) If a RWPA does not contain an interest listed in Texas Water Code, 16.053(c), no membership designation for the subject interest is required.

g) 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 (e) of this section.

h) The RWPG, at its discretion may at any time add additional voting and or non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in section (e) that the RWPG considers appropriate for water planning. The RWPG shall maintain adequate representation from those interests comprising the RWPA.

i) The RWPG, at its discretion may at any time 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 (e).

- j) The RWPGs shall add the following non-voting members of each RWPG:

- 1) Staff member of the board to be designated by the EA;
- 2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;
- 3) Member designated by each adjacent RWPG to serve as a liaison;
- 4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA; and
- 5) Staff member of the Texas Department of Agriculture designated by its commissioner.

- k) Non-voting members of the RWPG shall receive meeting notifications and information in the same manner as voting members.

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

### §357.C. General Regional Water Planning Group Responsibilities and Procedures<sup>3</sup>

- (a) Preplanning prior to the preparation of the RWPs. In accordance with the public participation requirements in §357.E, the RWPG shall perform the following tasks:
- 1) hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan;
  - 2) prepare a scope of work that includes a detailed description of tasks to be performed, identification of responsible parties for task execution, a task schedule, task and expense budgets, and description of any interim products, draft reports, and final reports that are to be developed as part of 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.E(a); and
  - 4) designate a political subdivision or political subdivisions as a representative(s) 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) Before a RWPG begins the process of identifying potentially feasible water management strategies, it shall document the process by which it will list all possible water management strategies and identify the water management strategies that are potentially feasible for meeting a need in the region. Once this process is identified, the RWPG shall present it to the public for comment at a public meeting in accordance with §357.E(a) of this title (relating to Notice and Public Participation).

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

- 1) identify water supplies that are available for voluntary redistribution in a RWPA or to other RWPAs;
- 2) where appropriate, adopt previous RWP and or state water plan information, updated as necessary, as the RWP; and or

<sup>3</sup> Regrouped portions of current TAC 31 §357.6(2); 357.7(a)(5)(C)(ii); and 357.6. Removed references to 'interregional subareas' and left content to allow for this possibility if desired.

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

#### §357.D. Guidance Principles for State and Regional Water Planning<sup>4</sup>

Development of the state water plan and of RWPs 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 RWPs and State Water Plan shall serve as long-term water supply plans under drought of record conditions;

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

- (4) regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the RWPA and state including identification of those policies and actions that may be needed to meet Texas' water supply needs and preparation for and response to drought conditions;

- (5) 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;

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

- (7) consideration of the effect of policies or water management strategies on the public interest of the state, water supply, and those entities involved in providing this supply throughout the entire state;

- (8) consideration of all water management strategies the RWP determines to be potentially feasible when developing plans to meet future water needs and to

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<sup>4</sup> Regrouped portions of current TAC 31 §357.5(a); 358.3; 357.5(e)(1),(3), and (4); and 357.5(k) and (l) and removed activities to be carried out by TWDB that are not actually principles of planning.

respond to drought so that cost effective water management strategies which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are considered and approved;

(9) 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;

(10) consideration of a balance of economic, social, aesthetic, and ecological viability;

(11) for RWPA's without approved RWPs 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;

(12) the principles that 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;

(13) protection of existing water rights, water contracts, and option agreements, but may consider and evaluate potential amendments of water rights, contracts and agreements. Any amendments will require the eventual consent of the owner;

(14) the principle that use of groundwater in Texas is governed by the right of capture doctrine and in accordance with Tex Water Code 36.002 (relating to Ownership of Groundwater), unless such use is under the authority of a locally controlled groundwater management district;

(15) consideration of recommendations of river and stream segments of unique ecological value to the legislature for potential protection;

(16) consideration of recommendation of sites of unique value for the construction of reservoirs to the legislature for potential protection;

(17) coordination of water planning and management activities of local, regional, state, and federal agencies and consideration of existing local, regional, and state water plans and information and existing state and federal programs and goals.

(18) designated water quality and related water uses as shown in the state water quality plan should be improved or maintained;

- (19) coordination of water planning and management activities of RWPGs to identify common needs and issues and achieve efficient use of water supplies, including the board and the neighboring RWPGs, working together to identify common needs, issues, and/or problems and working together to resolve conflicts in a fair, equitable, and efficient manner;
- (20) the water management strategies 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;
- (21) evaluation of water management strategies using environmental information in accordance with the Commission's adopted environmental flow standards under 30 TAC Ch. 298 or, if unavailable, information from or in the absence of such information, information from existing site-specific studies or state consensus environmental planning criteria.
- (22) consideration of environmental water needs including instream flows and bay and estuary inflows including adjustments to water management strategies to provide for appropriate, environmental water needs including instream flows and bay and estuary needs in accordance with the Commission's adopted environmental flow standards under 30 TAC Ch. 298.
- (23) planning consistent with all laws applicable to water use for the state and RWPA;
- (24) the inclusion of ongoing water development projects which have been issued a permit by the Commission or a predecessor agency;
- (25) provide specific recommendations of water management strategies 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.K(f)(2) of this title (relating to Regional water Plan Development) and, to determine environmental sensitivity, the RWPGs shall use the process described in §357.K(f)(3) of this title.
- (26) 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;

(27)planning groups must consider existing regional water planning efforts when developing their plans; and,

#### §357.E. Notice and Public Participation<sup>5</sup>

RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act (Government Code Chapter 551) with a copy of all materials presented or discussed available for public inspection prior to and following the meetings and shall meet the following additional notice requirements when specifically referenced as required under other subchapters:

- (a) **Requirement - A** All public notices required by this subchapter shall comply with this section and shall meet the following requirements:
  - (1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; Executive Committee meetings; subcommittee or subgroup meetings; meetings to replace RWPG members or add of new RWPG members.
  - (2) Published 72 hours prior to the meeting,
  - (3) Notice shall include:
    - (a) a date, time, and location of the meeting,
    - (b) a summary of the proposed action to be taken, and
    - (c) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.
  - (4) Entities to be notified include:
    - (a) All voting and non-voting RWPG members,
    - (b) Any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity, and
    - (c) each County Clerk, in writing, within the RWPA.
  - (5) Notice and agenda to be posted:
    - (a) On the website of the host political subdivision and or on the Board website if requested by the region, and

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<sup>5</sup> Entirely reworked and consolidated this content from current rules primarily from current TAC 31 §357.12 along with other public participation requirements scattered throughout 357. Simplified content into three categories of notice and participation which required making some minor changes to specific notice and timing requirements in order to limit to three the number of general types of notice requirements.

- (b) Texas Secretary of State website
- (6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:
  - (a) Agenda of meeting, and
  - (b) Copies of all materials presented or discussed at the meeting.
- (b) **Requirement - B** Notice under this section shall meet the following requirements:
  - (1) These notice requirements apply to the following RWPG actions: population projection and or water demand projection revision requests; substitution of alternative water management strategies; and, minor amendments to RWPs.
  - (2) Notice of meetings under this section shall be published/postmarked on the internet, emailed, and mailed to the public before the 14<sup>th</sup> day preceding the date of the meeting.
  - (3) Notice shall include:
    - (A) a date, time, and location of the meeting,
    - (B) a summary of the proposed action to be taken,
    - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted, and
    - (D) that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.
  - (4) Entities to be notified include:
    - (A) All voting and non-voting RWPG members,
    - (B) Any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity,
    - (C) each County Clerk, in writing, where the RWPA is located, and
    - (D) each County Clerk in counties outside the RWPA where a recommended or alternative water management strategy being considered would be located.
  - (5) Notice and associated meeting agenda to be posted:
    - (A) On the website of the host political subdivision and or on the Board website if requested by the RWPG, and
    - (B) Texas Secretary of State website.

- (6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:
  - (A) Agenda of meeting, and
  - (B) Copies of all materials, reports, plans presented or discussed at the meeting
- (7) Public comments to be accepted as follows:
  - (A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action.
  - (B) Oral and written public comment during meeting, and
  - (C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.
- (c) **Requirement - C** Notice under this section shall meet the following requirements:
  - (1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; holding hearings for IPPs; and, requesting research and planning funds from the Board.
  - (2) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA as follows:
    - (a) before the 30th day preceding the date of the public meeting or hearing; and,
    - (b) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.
  - (3) notice of the public meetings and public hearings shall include:
    - (A) a date, time, and location of the public meeting or hearing;
    - (B) a summary of the proposed action to be taken;
    - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and
    - (D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 60 days after the hearings.

- (E) RWPGs shall make copies of the IPP available for public inspection at least one month before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing.
- (4) Notice shall be mailed to, at a minimum, the following:
- (A) notification of all entities that are to be notified under §357.E(b)(4) of this title;
  - (B) each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;
  - (C) each county judge of a county located in whole or in part in the RWPA;
  - (D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;
  - (E) each County Clerk in counties outside the RWPA where a recommended or alternative water management strategy being considered would be located.
  - (F) Additionally, for public hearings associated with IPPs or major RWP amendments:
    - i. each retail public utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and
    - ii. each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission;
  - (G) Additionally, a RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs, and
- (5) Notice and associated hearing and meeting agenda shall also be posted:
- (a) On the website of the host political subdivision and or on the Board website if requested by the RWPG,
  - (b) Texas Secretary of State website, and
  - (c) In the Texas Register.
- (6) Public comments to be accepted as follows:

- (A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and,
  - i. Until not earlier than 30-days following the date of the public hearing on a major amendment to a RWP
  - ii. Until not earlier than 60 days following the date of the public hearing on an IPP.
- (B) Verbal public comments at the noticed meeting or hearing;
- (C) Comments received must be considered as follows:
  - i. Comments associated with hearings must be considered by RWPG members when adopting a RWP or adopting a major amendment to a RWP.
  - ii. Comments associated with a preplanning meeting, scope of work development, and/or an application for funding to the Board must be considered prior to taking RWPG action.

#### **§357.F. General Considerations for Development of Regional Water Plans<sup>6</sup>**

RWPGs must consider existing regional water planning efforts, as well as local, and state water plans and planning efforts and information and existing local, regional, state and or federal programs and goals when developing their plans, including:

- (a) water conservation plans;
- (b) drought management and drought contingency plans;
- (c) information compiled by the board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (Water Loss Audits);
- (d) approved groundwater conservation district management plans;
- (e) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;
- (f) local and regional water management plans;
- (g) water availability requirements promulgated by a county commissioners court in accordance with Tex. Water Code §35.019 (relating to Priority Groundwater Management Areas);

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<sup>6</sup> Primarily a consolidation and reorganization of current TAC 31 §357.5(d),(e)(2)(i), and (k) and 357.7 along with all other related content from 357. Language associated with 357.7(a)(1)(J) “summary of recommendations from the state water plan” was removed as impractical for inclusion in a regional water plan.

- (h) other information available from existing local or regional water planning studies;
- (i) the Texas Clean Rivers Program;
- (j) the U.S. Clean Water Act;
- (k) water management plans
- (l) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;
- (m) approved groundwater conservation district management plans and other plans submitted under Texas Water Code, §16.054; and,
- (n) any other information available from existing local or regional water planning studies.

**§357.G. Description of the Regional Water Planning Area<sup>7</sup>**

RWPs shall contain a standalone chapter that describes the RWPG and that describes the following:

- (a) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources,
- (b) current water use and major water demand centers,
- (c) current groundwater, surface water, and reuse supplies including major springs that are important for water supply or protection of natural resources,
- (d) wholesale water providers,
- (e) agricultural and natural resources,
- (f) identified water quality problems,
- (g) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply,
- (h) summary of existing local and regional water plans,

- (i) the identified historic drought(s) of record within the planning area,

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<sup>7</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

- (j) current preparations for drought within the RWPA,
- (k) 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,
- (l) An identification of each threat to agricultural and natural resources and a discussion of how that threat will be addressed or affected by the water management strategies evaluated in the plan.

#### §357.H. Projected Population and Water Demands<sup>8</sup>

RWPs shall contain a standalone chapter presenting projected population and water demands. Results shall be reported by:

- (a) WUGs defined as:
  - (1) cities with populations greater than 500 people,
  - (2) retail public utilities for counties that have less than five retail public utilities that provide more than 280 acre-feet per year for municipal use,
  - (3) individual retail public utilities or collective data for all such retail public utilities that form a collective reporting unit such as being served by a common WWP or having a common source or other association appropriate for the area, in the judgment of a RWPG, for counties with more than five retail public utilities that provide more than 280 acre-feet per year for municipal use;
  - (4) municipal and domestic water use, referred to as county-other, not included in §357.H(a)(1-3); and
  - (5) non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a county in a RWPA.
  - (6) If a WUG lies in one or more counties and or RWPA and or river basins, data shall be reported for each river basin, RWPA, and county split.
- (b) WWPs (water suppliers that sell water to other water suppliers for resale to WUGs) by category of water use (municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock) for each county or portion of a

<sup>8</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

county in the RWPA. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin.

(c) WUG and or WWP current contractual obligations to supply water must be reported 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 subchapter §357.I in order to determine net existing water supplies available for each WUG's own use.

(d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in Chapter 372 of the Texas Health and Safety Code. RWPGs will determine and report how changes in plumbing fixtures would affect projected municipal water demands using methods approved by the EA.

(e) Source of population and water demands. In developing RWPs, RWPGs shall use:

(1) Population and water demand projections developed by the EA that will be contained in the next state water plan and adopted by the board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of board approved population and or water demand projections if the request demonstrates that population and 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 issue at a public meeting for which notice has been posted in accordance with §357.E(b). The RWPG will summarize public comments received in its request for projection revisions. Within 45 days of receipt of a request from a RWPG for revision of population or water demand projections, the EA shall consult with the requesting RWPG and respond to their request.

(f) Projections shall be presented for each planning decade for each of the above reporting categories.

### §357.I. Water Supply Analysis<sup>9</sup>

RWPs shall contain a standalone chapter containing a water supply analysis.

(a) RWPGs shall perform an evaluation of the adequacy of:

<sup>9</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

- (1) source water availability during drought of record conditions; and,
- (2) existing water supplies that are legally and physically available to WUGs and wholesale water suppliers within the RWPA for use during the drought of record.

(b) Evaluations will consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during drought of record conditions.

(c) Analysis of surface water available during drought of record will be based on firm yield; however, the analysis may be based on operational procedures other than firm yield with written approval from the EA who will consider a written request from a RWPG to use procedures other than firm yield. For surface water supply analysis, RWPGs will use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. RWPGs will assume full utilization of existing water rights and no return flows when using Water Availability Models and RWPGs may use better site specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available.

(d) RWPGs shall use modeled available groundwater volumes for groundwater availability, as issued by the Board, and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater availability used in the RWP must be consistent with the desired future conditions as of the date the Board most recently adopted a state water plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent state water plan.

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

(f) The EA shall provide available technical assistance to RWPGs upon request to assist them in selecting appropriate methods and data to be used to determine source water supply availability and existing water supplies.

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

(h) Results of evaluations will be reported by WUG as defined in §357.H(a) and WWPs. If a WUG or WWP lies in one or more counties and or RWPA and or river basins, data will be reported for each river basin, RWPA, and county.

### §357.J. Comparison of Water Supplies and Demands (Needs analysis)<sup>10</sup>

RWPs will include comparisons of existing water supplies and projected water demands to identify water needs.

- (a) RWPGs shall compare water demands as developed in accordance with §357.H with existing water supplies available to WUGs and WWP in a planning area as developed in accordance with §357.I to determine if WUGs as defined in §357.H(a) will experience water surpluses or needs for additional supplies. Results will be reported for WUGs and for WWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in a RWPA. If a WUG lies in one or more counties and or RWPAs and or river basins, data will be reported for each river basin, RWPA, and county.
- (b) The social and economic impacts of not meeting water needs will be evaluated by RWPGs and reported for each RWPA.
- (c) Upon request, the EA will provide technical assistance to RWPGs, on water supply and demand analysis, including methods to evaluate the social and economic impacts of not meeting needs.
- (d) Results of evaluations will be reported by WUG as defined in §357.H(a) and WWPs. If a WUG or WWP lies in one or more counties and or RWPAs and or river basins, data will be reported for each river basin, RWPA, and county.

(e) RWPGs shall perform a subsequent, secondary water needs analysis for all WUGs and WWPs for which a) conservation water management strategies and or b) direct reuse water management strategies are recommended. This secondary water needs analysis will calculate the water needs that would remain after assuming all recommended conservation and direct reuse water management strategies are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and WWP and decade.<sup>11</sup>

### §357.K. Identification and Evaluation of Potentially Feasible Water Management Strategies<sup>12</sup>

RWPGs shall identify and evaluate potentially feasible water management strategies for all WUGs and WWPs with identified water needs.

- (a) RWPGs shall identify potentially feasible water management strategies to meet water supply needs identified in §357.J in accordance with the process in §357.C(b). Strategies

<sup>10</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

<sup>11</sup> Already a requirement of the current regional water planning contracts. To be performed and provided by the Board to the extent possible by data provided by the RWPG in the online state water planning database. Based on evaluations performed by US Army Corps of Engineers evaluations of projects.

<sup>12</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

will be developed for WUGs as defined in §357.H(a) and WWP. Strategies must also meet new water supply obligations necessary to implement recommended water management strategies of other WWPs and WUGs for which plans are developed under this paragraph.

- (b) RWPGs shall plan for water supply during Drought of Record conditions.
- (c) In developing RWPs, RWPGs shall provide WMSs to be used during a drought of record.
- (d) Types of potentially feasible strategies include but are not limited to:
  - (1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.
  - (2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, 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. RWPs shall consider 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.
- (e) RWPGs shall evaluate water management strategies with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.
- (f) Evaluations of potentially feasible water management strategies shall include the following analyses:
  - (1) an equitable comparison between and consistent evaluation and application of all water management strategies the RWPGs determine to be potentially feasible for each water supply need.

- (2) a quantitative reporting of 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, (costs do not include distribution of water after treatment), incorporating factors used calculating infrastructure debt payments and may include present costs and discounted present value costs;
- (3) a quantitative reporting of 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 will be in accordance with the Commission's adopted environmental flow standards under 30 TAC Ch. 298 or, if unavailable, information from 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 Texas Parks and Wildlife Department to ensure that water management strategies are adjusted to provide for appropriate environmental water needs including instream flows and bays and estuaries inflows.
- (4) a quantitative reporting of impacts to agricultural resources;
- (5) discussion of impacts on other water resources of the state including other water management strategies and groundwater and surface water interrelationships;
- (6) for each threat to agricultural and or natural resources identified pursuant to §357.G(g), a discussion of how that threat will be addressed or affected by the water management strategies evaluated;
- (7) if applicable, consideration and discussion of the provisions in Texas Water Code, §11.085(k)(1) for interbasin transfers of surface water (at minimum, this consideration will include a summation of water needs in the basin of origin and in the receiving basin);
- (8) 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;
- (9) a description of the major impacts of recommended water management strategies on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended water management strategies to current conditions using best available data;
- (10) consideration of water pipelines and other facilities that can be used for water conveyance as described in subsection §357.F(C) of this section; and

(11) other factors as deemed relevant by the RWPG including recreational impacts.

(g) Conservation, Drought Management Measures, and Drought Contingency Plans must be considered by RWPGs when developing the regional plans including during the process of identifying, evaluating, and recommending water management strategies. RWPGs shall incorporate water conservation planning and drought contingency planning.

(1) Drought management measures including water demand management. The EA will provide technical assistance to RWPGs regarding drought management measures. RWPGs must consider drought management measures for each need identified in §357.J of this chapter and must include such measures for each user group to which Texas Water Code §11.1272 (relating to requirements for drought contingency plans) applies. Impacts of these drought management measures on water needs must be consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.1272. If a RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. The EA shall provide technical assistance to RWPGs regarding water conservation practices. RWPGs must consider water conservation practices for each identified water need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 applies. The impact of these water conservation practices on water needs must be consistent with requirements in appropriate Commission administrative rules related to §11.1271 (relating to requirements for water conservation plans for financial assistance applicants at the Board, and water rights applicants at the Commission).

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

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085(Relating to Interbasin Transfers) applies, RWPGs will include a water conservation strategy, pursuant to §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies,

RWPGs will determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs will develop conservation strategies based on this determination. In preparing this evaluation, RWPGs will seek the input of WUGs and WWP as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs will develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085 (relating to the interbasin transfer of surface water). Strategy evaluation in accordance with §357.K will include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the board from the water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to water loss audits).

(3) The regional water RWPG shall include in its RWP a model water conservation plan pursuant to Texas Water Code 11.1271.

(h) Evaluations of potentially feasible water management strategies shall include analyses of [16.053(e)(3)(D) existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water; (per Tex. Water Code 16.053(r)) this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. Associated information to be submitted to the EA in accordance with guidance to be provided by EA.

(i) RWPs shall include a chapter consolidating the water conservation recommendations of the RWP.

#### **§357.L. Drought Response Information, Activities, and Recommendations<sup>13</sup>**

RWPs shall include a stand-alone chapter that consolidates and presents information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, drought of record conditions. This information will also be used in development of the state's Drought Preparedness Plan by the Drought Preparedness Council. RWPGs shall present:

<sup>13</sup> New RWP chapter that will consolidate all drought-related content in one place and to improve information available during the onset of droughts and in emergency situations for implementation of the state Drought Preparedness Plan.

- (a) an overall assessment of current preparations for drought within the RWPA including a description of how water suppliers in the RWPA identify and respond to the onset of drought.
- (b) critical drought response information regarding existing water sources and existing water supply infrastructure including:
  - 1) Sources of water supply. For each source of water supply in the RWPA designated in accordance with §357.I of this title, identify:
    - (A) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response by the manager of the water source and those entities relying on the source, and
    - (B) Actions to be taken as part of the drought response by the manager of the water source and the entities relying on the source.
  - 2) Existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water; (per Tex. Water Code 16.053(r)) including any associated evaluations of potentially feasible strategies. This information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. Associated information to be submitted to the EA in accordance with guidance to be provided by EA; and,
  - 3) General descriptions of local drought contingency plans that involve making emergency connections between water systems and or WWP systems that do not include locations or descriptions of facilities that are disallowed under §357.K(g).
- (c) recommended and alternative drought management water management strategies in the RWP including:
  - 1) List and description of specific drought management strategies, and associated WUGs and WWPs, that were recommended by the RWPG.
  - 2) Triggers to be used to initiate each of the recommended drought management water management strategies;
  - 3) List and summary of drought management measures or other strategies that were included in the RWP as alternative water management strategies per §357.M, including associated triggers.
  - 4) List of all potentially feasible drought management water management strategies that were considered and or evaluated by the RWPG but not recommended.
- (d) potential emergency responses to local drought conditions or loss of existing water supplies including:

- 1) 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:
    - (A) have existing populations less than 30,000.
    - (B) rely on a sole source for its water supply regardless of whether the water is provided by a WWP.
    - (C) All county-other WUGs.
  - 2) descriptions of those potentially feasible water management strategies described under §357.K based on analyses of 16.053(e)(3)(D) existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water; (per Tex. Water Code 16.053(r)) this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. Associated information to be submitted to the EA in accordance with guidance to be provided by EA.
- (e) consideration by the RWPG of any relevant recommendations from the Drought Preparedness Council provided under Tex Water Code 16.055(e)(3) and (4).
- (f) recommendations by the RWPG regarding drought preparation and response regarding:
- 1) Development of, content contained within, and implementation of local drought contingency plans required by TCEQ;
  - 2) Current drought management preparations in the RWPA including:
    - i. drought triggers.
    - ii. 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.
- (g) a model drought contingency plan pursuant to Texas Water Code 11.1272.

### §357.M. Recommended Water Management Strategies and Alternative Water Management Strategies<sup>14</sup>

RWPGs shall recommend water management strategies to be used during a drought of record based on the potentially feasible water management strategies evaluated under subchapter §357.K.

- (a) RWPGs shall provide specific recommendations of water management strategies based upon the identification, analysis, and comparison of water management strategies by the RWPG that the RWPG determines are potentially feasible so that the cost effective water management strategies that are environmentally sensitive are considered and adopted unless a RWPG demonstrates that adoption of such strategies is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs will use follow processes described in subchapter §357.K. The recommendations are to include alternative water management strategies that will be included in the RWP.
- (b) Strategies will be selected so that cost effective water management strategies, which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.
- (c) RWPGs shall identify and recommend water management strategies for all WUGs and WWPs with identified water needs and that meet all water needs during the drought of record except in cases where:
  - (1) no water management strategy is feasible. In such cases, RWPGs must explain why no management strategies are feasible; or
  - (2) a political subdivision that provides water supply (other than water supply corporations, counties, or river authorities) does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.
- (d) Specific recommendations of water management strategies to meet an identified need will not be shown as meeting a need for a political subdivision if the political subdivision in question objects to inclusion of the strategy for the political subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.
- (e) Recommended strategies must protect of existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements (any amendments would require the eventual consent of the owner);
- (f) In a separate section of the RWP, describe major impacts of recommended water management strategies on water quality and compare water quality conditions with the water management strategies to current conditions.
- (g) Consider effects of the RWP on navigation.

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<sup>14</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

(h) Recommended water management strategies and the associated results of all the potentially feasible water management strategy evaluations will be reported by WUG and WWP. If a WUG or WWP lies in one or more counties and or RWPAs and or river basins, data will be reported for each river basin, RWPA, and county.

(i) RWPGs will report calculated planning safety factors for each WUG and WWP included in the RWP assuming all recommended water management strategies are implemented. This calculation shall be based on the sum of: a) the total existing water supplies, plus b) all water supplies from recommended water management strategies for each entity, when applicable; divided by that entity's total projected water demand, within the planning decade. The resulting calculated safety factor shall be presented in the plan by entity and decade for every WUG and WWP.<sup>15</sup>

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

#### **§357.N. Regulatory, Administrative, or Legislative Recommendations<sup>16</sup>**

The RWP shall contain any regulatory, administrative, or legislative recommendations regarding:

(a) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWP 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 subsection (b) of this section. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) A RWPG may recommend a river or stream segment as being of unique ecological value based upon the 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

<sup>15</sup> Already a requirement of the current regional water planning contracts. To be performed and provided by the Board based on data provided by the RWPG in the online state water planning database. Based partially on planning level evaluations performed by US Army Corps of Engineers.

<sup>16</sup> Section broken out to be a separate subchapter.

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 streams 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.

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

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

- (1) site-specific reservoir development is recommended as a specific water management strategy or in an adopted RWP; or
  - (2) 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:
  - (3) reservoir development to provide water supply for the current planning period; or
  - (4) where it might reasonably be needed to meet needs beyond the 50-year planning period.
- (c) Any other recommendation 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.
- (d) The RWPG may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted

#### **§357.O. Infrastructure Financing Analysis<sup>17</sup>**

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

#### **§357.P. Consistency with Long-term Protection of water resources, agricultural resources, and Natural Resources**

RWPGs shall provide a chapter describing 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 Chapter 358 of this title (relating to State Water Planning Guidelines). The regional water plan is consistent with the guidance principles if it is developed in accordance with §358.3 of this title (relating to Guidelines), §357.G-Q of this title (relating to development of RWPs), and §357.N of this title (relating to Ecologically Unique River and Stream Segments and Unique Sites for Reservoir Construction).

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<sup>17</sup> Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

### §357.Q. Changes to the Regional Water Plan

RWPs shall include a stand-alone chapter that describes the level of implementation of previously recommended water management strategies and of how the RWP has changed from the previous RWP to include:

- (a) Information on the progress of implementation of all water management strategies that were recommended in the previous RWP including conservation and drought management water management strategies.
- (b) Brief summary of how the RWP differs from the previous 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.
  - (4) Recommended and alternative water management strategies.

### §357.R. Adoption, Submittal, and Approval of Regional Water Plans<sup>18</sup>

Adoption and submittal of RWPs by RWPGs shall be in accordance with the following:

- (a) The RWPGs shall submit their adopted RWPs to the board by January 5, 2001, as modified by section §357(c)(3)(D) below, for approval and inclusion in the state water plan. In conjunction with the submission of RWPs, each RWPG should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region. Subsequent RWPs shall be submitted at least every five years thereafter. Public participation for revised RWPs shall follow the procedures under subchapter §357.E.
- (b) RWPGs shall concurrently submit to the EA and release to the public an IPP prior to adoption of the RWP. The initially prepared plan submitted to the EA must be in the electronic and paper format specified by the EA. The RWPGs must certify that the IPP is complete and adopted by the RWPG.
- (c) Submittal of RWPs. RWPGs shall submit initially prepared and adopted RWPs or 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.

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<sup>18</sup> Combination of content from current TAC 31 §357.10, 357.11; and 357.14. Section broken out to be a separate subchapter to better align with regional water planning process and RWP chapters.

(C) Summaries of all written and oral comments received pursuant to §357.R(d) of this title (relating to Adoption of Regional Water Plans by RWPGs), 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 §357.R(d) of this title.

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

(A) Initially prepared draft plans are due by March 1, 2010 and every five years thereafter unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the initially prepared plan, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the board's planning database system. All changes and corrections to this information must be entered into the board's database prior to submittal of an adopted plan.

(C) The RWPG will transfer copies of all data 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 Texas Geographic Information Council regarding specifications mentioned in this subsection.

(D) Adopted plans (in accordance with §357.R) are due to the executive administrator by September 1, 2010 and every five years thereafter unless, at the discretion of the Board EA, a time extension no later than January 5, 2011, is authorized, and every five years thereafter.

(E) Final plans are due by January 5, 2011 and every five years thereafter.

(d) The RWPGs shall receive and consider the following comments when adopting a RWP:

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

(2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept for at least 90 days after the first public

hearing is held pursuant to §357.E(c) of this title (relating to Notice and Public Participation); and<sup>19</sup>

- (3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.E(c) of this title until at least 60 days after the public hearing is held pursuant to §357.E(c) of this title.
  - (e) The RWPG shall submit in a timely manner to the EA information on any known interregional conflict between RWPGs.
  - (f) The RWPG shall modify the RWP to incorporate board resolutions of interregional conflicts.
  - (g) The RWPG shall seek to resolve conflicts with other RWPGs and shall participate in any board sponsored efforts to resolve interregional conflicts.
- (b) Approval of RWPGs by the Board.

(1) The board may approve a RWP only after it has determined that the RWP complies with statute and rules.

(2) Upon receipt of a regional water plan adopted by the RWPG, the board will consider approval of such plan based on the following criteria.

(A) The board shall verify adoption of the RWP by the RWPG.

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

(c) Board Adoption of State Water Plan - RWPGs approved by the board pursuant to this chapter shall be incorporated into the state water plan as outlined in 358.3.

### §357.S. Consistency of Regional Water Plans<sup>20</sup>

RWPG shall submit to the development board a RWP that is consistent with the guidance principles and guidelines outlined in section §357.D of this chapter. Information provided shall be based on data provided or approved by the development board in a format consistent with the guidelines of sections §357.G through §357.Q of this chapter.

<sup>19</sup> Modified to sync with the initiation of the public comment period.

<sup>20</sup> Combination of content from current TAC 31 §357.5(c) and 357.13.

- (a) Projects proposed to the board for funding.
- (1) For the purposes of the Texas Water Code §16.053(j), projects proposed to the board for funding will be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:
    - (A) Is an enhancement of a current water supply identified in the analysis developed under §357.I of this title (relating to Regional Water Plan Development) as meeting a demand, even though the project is not specifically recommended in the RWP;
    - (B) Involves a minor modification to an existing surface water right that is not in conflict with the RWP;
    - (C) Is meeting a need in a manner consistent with the plan developed under §357.G through §357. Q of this title.
  - (2) For the purposes of the Texas Water Code §16.053(j), projects proposed to the board for funding to meet any need identified in an approved RWP for which there is not a recommended water management strategy in such plan will be considered by the board not to be consistent with the approved RWP.
  - (3) For the purposes of the Texas Water Code §16.053(k), 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).
- (b) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. RWPGs shall consider and use as a guide the state water plan and local water plans provided for in the Texas Water Code §16.054.

#### **§357.T. Intraregional Conflicts in Development of Regional Water Plans<sup>21</sup>**

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.

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<sup>21</sup> Content includes current TAC 31 §357.7(e).

**§357.U. Failure of a Regional Water Plan to Meet Regional Water Planning Requirements<sup>22</sup>**

In the event the board finds that the RWP does not meet the requirements of the Texas Water Code and this chapter and Chapter 358:

- (a) the Board shall direct the RWPG to make changes necessary for compliance with legal requirements.
- (b) The RWPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

**§357.V. Interregional Conflicts<sup>23</sup>**

(a) In the event the board finds that an interregional conflict exists between adopted RWPs, the EA may use the following process:

- 1) notify the affected RWPGs of the nature of the interregional conflict;
- 2) request affected RWPGs assistance in resolving the conflict; and

3) negotiate resolutions of conflicts with RWPGs as determined by the EA.

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

- 1) determine a proposed recommendation for resolution of the conflict;
- 2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the Texas Register and in a newspaper of general circulation in each county located in whole or in part in the RWPA's involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.E(c) of this title (relating to Notice and Public Participation) in the RWPA's proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPA's proposed to be impacted and to each affected RWPG;
- 3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, political subdivisions, and members of the

<sup>22</sup> Content includes current TAC 31 §357.14(4). Removed 357.14(5), (6), and (7) because it refers to a Board procedure that will be retained and captured in a separate, new agency procedure document.

<sup>23</sup> Content includes current TAC 31 §357.14(8),(9),(10), and (11) .

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.

### §357.W. Conflicts Between Regional Water Plans and Groundwater Management Plans<sup>24</sup>

- (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 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.

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<sup>24</sup> Content includes current TAC 31 §357.15. Language proposed to be removed in order to simplify the requirements includes 357.15(b)(3), (c), (d) and (f).

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

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

(d) If the board requires a revision to the groundwater conservation district's approved management plan, the board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board pursuant to Chapter 356 of this title (related 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) At the Board's discretion, the Board shall include in the state water plan a discussion of the conflict and its resolution.

#### §357.X. Amendments to Regional Water Plans<sup>25</sup>

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

(1) The petition must state:

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

(B) the specific sections and provisions of the approved RWP that are

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<sup>25</sup> Content includes current TAC 31 §357.11(f) and (g); 357.16; and 357.7(H).

affected by the changed condition or new information;

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

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The political subdivision that submitted the petition will receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, the EA will present the issue to the board for consideration at a public meeting. Before presenting the issue to the board, the EA will provide the RWPG, the political subdivision submitting the petition, and any political subdivision determined by the EA to be affected by the issue 30 days notice.

(b) Major Amendments to RWPs and State Water Plan. A RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.E(c) of this title. An amendment is major if it does not meet the criteria of section (c) or (d) of this subchapter. A RWPG may propose amendments to an approved RWP by submitting proposed amendments to the board for its consideration and possible approval under the standards and procedures of this subchapter.

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

(2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment as defined in §357.E(c). The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in §357.E(c).

(3) The proposed major amendment:

(A) Shall not result in an overallocation of an existing or planned source of water;

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

(C) Shall conform with rules applicable to RWP development as defined in §357.G through §357.Q.

- (D) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled meeting following the 30-day public comment period in accordance with §357.E(c). The amendment shall include response to comments received.
- (E) 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.
- (F) Board Amendments to the State Water Plan. The board may amend the state water plan to reflect the RWPG's approved major amendment.

(c) Minor Amendments and Clean Coal Project Amendments to RWPs and State Water Plan.

- (1) Minor Amendment to RWP. A RWPG may amend its RWP by providing copy of the proposed amendment to the EA.
- (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 overallocation of an existing or planned source of water;
  - (B) does not relate to a new reservoir;
  - (C) does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;
  - (D) does not have a significant substantive impact on water planning or previously adopted management strategies; and
  - (E) does not delete or change any legal requirements of the plan.
- (3) Determination by EA. If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.
- (4) RWPG Public Meeting. After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.E(b). 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.
- (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.

- (6) Board Amendments to the State Water Plan. The board may amend the state water plan, if necessary, to reflect the RWPG's approved major amendment under the schedule delineated in subsection (b) of this section. The board may approve any minor amendment to the state water plan upon the EA's determination under subsection (c) of this section.

(7) Amendment for Water Planning for A Clean Coal Project. An amendment to a RWP or the state water plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Tex. Water Code 5.001, shall be adopted by the process described in this section. However, a RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

- (A) the amendment does not significantly change the RWP; or  
(B) the amendment does not adversely affect other water management strategies in the RWP.

(d) Substitution of Alternative Water Management Strategies. After notice is provided in accordance with §357.E(b), RWPGs may substitute one or more evaluated alternative water management strategies for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the alternative water management strategy is capable of meeting the same water need. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

- (e) Amending the State Water Plan. Following amendments of RWPGs, the board shall make any necessary amendments to the state water plan as outlined in 358.3.

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Subject matter proposed to be removed from existing 31 TAC 357rules includes, but is not limited to:

- A significant portion of quoted statutory language that exists in current planning rules is proposed to be removed. For convenience, TWDB staff proposes placing all relevant statutory language in an accompanying pamphlet to be provided alongside the rules and guidance documents.
- 31 TAC 357.4 (a) – (d), (f): relating to initial establishment of RWPGs. It is proposed that these procedural operations specific to TWDB will be placed into agency procedural documents.
- §357.5 (g) and (h): relating to special water resources. It is proposed that these requirements be removed due to the fact that the water resources are planned for in the planning process requirements.
- §357.6(6): relating to the establishment of informational subareas. It is proposed that these specific requirements be removed as more general language has been proposed allowing RWPGs to plan as they consider appropriate.
- §357.7(a)(1)(J): requiring the planning area description to include a summary of recommendations in the state water plan. It is proposed that this requirement be removed as impractical.
- Other content that is not directly related to RWPG activities and or regional water plan development.