



September 6, 2016

Via Email to rulescomments@twdb.texas.gov

Mr. Les Trobman, General Counsel
Texas Water Development Board
P.O. Box 13231
Capitol Station
Austin, Texas 78711-3231

Re: Comments on Proposed Amendments to Chapter 357: TWDB's Regional Water Planning Rules Published in the August 5, 2016 *Texas Register*

Dear Mr. Trobman:

The Central Texas Water Coalition (CTWC) appreciates the opportunity to provide these comments on the Texas Water Development Board's (TWDB's) proposed amendments to 31 Texas Administrative Code (TAC) Chapter 357, entitled "Regional Water Planning." CTWC is a non-profit organization advocating for responsible water management and conservation policies for the Highland Lakes of Central Texas. Partners of the Coalition include lake residents, business owners, local government officials, property owner associations, environmentalists, and other entities with interests in protecting this critical drinking water supply. We view the water planning work of the TWDB and the Regional Water Planning Groups (RWPGs) as extremely important to the successful, long-term preservation and management of our state's water resources. The TWDB's regulatory guidance for the RWPGs is a key component of their successful operations.

The proposed rules (published at 41 *Tex.Reg.* 5685 on August 5, 2016) include a number of helpful clarifications and additional text to facilitate the understanding and implementation of the complex issues that each RWPG must address during each planning cycle. The CTWC supports the TWDB's stated regulatory objectives for the rules, and we believe these proposed rules represent significant progress toward achieving those objectives. At the same time, we respectfully offer the following comments intended to further clarify and facilitate the important work of the RWPGs and to assist the people of Texas in understanding and participating in this effort:

I. Definitions in 31 TAC §357.10.

- A. Definition of "County-Other." The proposed definition of "County-Other" in §357.10(7) refers to "an aggregation of utilities that provide less than an average of 100 acre-feet per year, as well as rural areas not served by a water utility in a given county." Does the "County-Other" Water User Group (WUG) serve as a catch-all category for miscellaneous water users? Or does it only include domestic or municipal water users? At first glance, the definition seems to suggest that this WUG includes only small water supply entities (or individuals) providing water for municipal and domestic use; and proposed §357.10(41)(E) apparently validates that interpretation. Is the "County-Other" category intended to include other types of water uses and users? Do the Regional Water Plans include Water Demand numbers for domestic and livestock uses (which are exempt

from surface and groundwater permitting requirements) as part of the total Water Demand in the Region?

- B. Definition of “Drought of Record.” The proposed rules define a “Drought of Record” in §357.10(11) as the “period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.” Although there is a need for a definition of this term, since it is critical to the regional water planning process, it is unclear that this broad definition provides sufficient objective criteria for each RWPG to make this determination in a uniform and consistent manner. If the determinations are made within each Region using varying criteria, then the 16 Regional Water Plans that become the State Water Plan may lack the overall consistency that is so vital to the State Water Plan itself. To address this concern, the TWDB should provide the RWPGs with the “Drought of Record” time period and conditions for the watersheds within each Region.
- C. Definition of “Firm Yield.” CTWC supports the TWDB’s effort to improve the consistency between the definition of Firm Yield that appears in Chapter 357 with the definition that is utilized in the Texas Commission on Environmental Quality’s water rights rules at 30 TAC Chapter 297. The consistent identification, use, and application of this concept for surface water rights permitting purposes and for state water planning purposes is very important to the accuracy and value of our Regional and State Water Plans. In addition, we encourage the TWDB to institute procedures to assure that Firm Yield calculations are routinely updated as new hydrology data become available.
- D. Definition of “Water Demand.” The proposed new definition of “Water Demand” in §357.10(37) focuses on the “volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.” We support the addition of a defined term for “Water Demand” in the existing rules, as this water quantity will be used to calculate the “Water Need” when it is subtracted from the “Existing Water Supply.” However, as currently written, this definition raises several areas of concern:
1. Ambiguity in Water Volume Determinations. The reference to a “volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group” appears to require the calculation of a new water volume for use in this definition, since it introduces new and subjective terminology regarding water requirements for a WUG’s “anticipated domestic, public, and/or economic activities.” If the new definition is intended to capture a broader universe of water users and water demands (other than the demands of the WUGs identified in §357.10(41)), such as consumptive and non-consumptive demands that support significant economic activities and environmental flows, we support that goal and suggest that the definition be revised to read as follows:

Water Demand – Volume of water required to satisfy the anticipated demands of the Water User Groups identified in §357.10(41) of this section, along with additional water volumes required to carry out the anticipated domestic, public, and/or economic activities of other water users and water uses within

a Regional Water Planning Area, including demands that support significant economic activities and environmental flows.

If the new definition is intended to merely refer to the Water Demand numbers assigned to each WUG in accordance with the TWDB’s technical guidance for Regional Water Plans, please assure that this definition focuses solely upon objective criteria, based upon the criteria applied in the technical development of a Regional Water Plan, so that the Water Demand numbers used by each Region and compiled into each State Water Plan are reasonable, consistent, and reproducible.

2. Ambiguity in Reference to Drought Conditions. The proposed new definition refers to a water volume required “during drought conditions.” Is this intended to refer to “**drought of record**” conditions? If so, please add that clarification. If not, please consider additional regulatory guidance on the “drought conditions” to be utilized in this calculation, or explain that the TWDB will calculate and provide the Water Demand numbers for the RWPGs to use in their Regional Plans, if that is the case.

II. Guidance Principles and Notice Requirements in 31 TAC Chapter 357, Subchapter B.

- A. The opening paragraph of 31 TAC §357.21(a) states that “RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551, with a copy of all materials presented or discussed available for public inspection prior to and following the meetings...” This rule provides an excellent foundation for the open, transparent access to the deliberations and decisions of a RWPG that is so important to the success of the State’s “bottom-up” water planning process. To assure that public notice and opportunity for participation is effectively and meaningfully achieved, we have these suggestions:
 1. Add language clarifying that the business of RWPG Committees is also subject to the Texas Open Meetings Act.
 2. As part of the checklist of items that RWPGs must perform and submit to the TWDB at the conclusion of a planning cycle, include an item in which the RWPG affirms that the RWPG and its Committees have conducted their business in accordance with the Texas Open Meetings Act.
- B. The existing and proposed TWDB rules relating to notice and public participation serve an essential role in assuring that the deliberations and decisions of the RWPGs will occur in an open, transparent manner. Generally, the rules appear to promote public notice and opportunity for public participation. However, there are proposed revisions in several of the rules that may result in decreased public notice. We request that the following provisions be clarified to assure that public notice does **not** occur solely via mailing meeting notices to the County Clerk of the county in which the administrative office of the host Political Subdivision is located. In all cases, at a minimum, notices should be posted on the website of the RWPG or host Political Subdivision. In addition, notice should be made as prescribed in the rules, and

persons or entities that have requested notice of RWPG activities should also receive public notices. As the rule explains, written notice may be served by mail or by email.

More specifically, the following language in the proposed rules, as it appears in §§357.21(b)(5)(A), 357.21(c)(5)(A), and 357.21(d)(6)(A), should be revised to disallow RWPGs from mailing a notice to a County Clerk **in lieu of** posting that notice on its website. Please consider the following revision to assure that the RWPG's notices are posted on an RWPG website, where interested persons are most likely to look for such information:

On the website of the RWPG or host Political Subdivision. In ADDITION TO ~~lieu of~~ posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located.

III. Conclusion

In conclusion, the CTWC supports the TWDB's impressive efforts to clarify and improve the agency's Regional Water Planning rules, including the rules that assure and enhance public notice, transparency, and opportunity for public participation in the important work of the RWPGs and their committees. Thank you for the opportunity to provide these comments, and please contact me at (512) 755-4805 if you have any questions or if we can be of any assistance as you proceed in this rulemaking.

Sincerely,



Jo Karr Tedder
President

cc: Ms. Temple McKinnon (via email to temple.mckinnon@twdb.texas.gov)

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