



March 27, 2020

[VIA EMAIL TO RULESCOMMENTS@TWDB.TEXAS.GOV](mailto:RULESCOMMENTS@TWDB.TEXAS.GOV)

Mr. Todd Chenoweth, General Counsel
Office of General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

Re: Comments of the Central Texas Water Coalition on Proposed Amendments to 31 Texas Administrative Code Chapter 357 (Regional Water Planning); as published at 45 *Tex.Reg.* 1317 on February 28, 2020

Dear Mr. Chenoweth:

On behalf of the Central Texas Water Coalition (CTWC), a nonprofit organization that is actively involved in Texas water planning and other water-related issues, thank you for the opportunity to provide these comments on the proposed amendments to 31 Texas Administrative Code (TAC) Chapter 357 (relating to Regional Water Planning). The Texas Water Development Board's (TWDB's) preamble explains that the rule is intended to implement legislative changes (including those in House Bill 807, passed in the 2019 Legislative Session) and to clarify existing language relating to regional water planning. Our first three comments below address some of those proposed changes. The fourth comment requests the agency's inclusion of additional guidance on the composition and operation of the Regional Water Planning Groups (RWPGs), either as part of this rulemaking or, in the interim, by promptly addressing these areas of confusion with guidance documents and updated model bylaws for the RWPGs (with future rulemaking activities to incorporate these guidance documents into rules).

1. **Interregional Planning Council.** Proposed new §357.11(k) describes the Board's appointment of a new Interregional Planning Council and the general obligations of this new Council. However, the language of the proposed rule raises some questions and seems to lack specifics on several aspects of this new entity and its composition, function, and purpose. For example, proposed §357.11(k)(1) indicates that the Council is composed of "one voting member from each RWPG, as appointed by the Board." Does this mean that a Council member has one vote per RWPG? Or that only voting members of a RWPG are eligible to be appointed to the Council? Are the Alternates on a RWPG eligible for nomination to the Council?

In proposed §357.11(k)(2), the rule indicates that "each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination." Does this mean that a RWPG member and his/her designated alternate must be nominated together? How many persons does the Executive Administrator expect the RWPGs to nominate?

The new provision indicates that the Planning Council must deliver a report to the TWDB by the deliverable date of the 2021 adopted Regional Water Plans. As we understand it, that date is October 14, 2020. Since some of the RWPGs have only a few meetings scheduled in the next few months, and those meetings will likely be focused on reviewing and preparing responses to the public comments received on their Initially Prepared Plans, it seems like a challenge for the RWPGs to nominate Planning Council members, have them approved by the Board, and have the Planning Council convene a public meeting and prepare a report before October 14, 2020. In addition, the current national, state, and local government orders and guidelines regarding the coronavirus may significantly impede the ability of the Planning Groups and the agency staff to accomplish these tasks in a timely manner. Please let us know if we have misunderstood the proposed schedule in the rules.

We believe the Planning Council has potential benefits for state water planning, and we support the limited term limits for the Council members. Please clarify that Council members will be appointed for a period no longer than a five-year planning cycle, and that they cannot serve on the Council unless: 1) they are active members or alternates on their RWPG; and 2) they live within the geographic boundaries of the RWPG they are chosen to represent.

We encourage the TWDB to facilitate the work of this Planning Council in a way that promotes public observation and participation and draws upon the expertise of the TWDB staff to facilitate the discussions, participate in the exchange of information, and assist in the development of the Council's report. We also urge the TWDB to work with this Council to identify and discuss issues of potential state-wide interest and issues that could benefit from a common approach, such as use of "Safe Yield" principles for water supply reservoirs.

2. **Significant Identified Water Needs.** Proposed new §357.34(h) describes a RWPG's duties in response to "significant identified Water Needs." However, it appears that each RWPG is expected to "define the threshold to determine whether it has significant identified Water Needs." Please explain why the TWDB is not providing more direction on this determination. If 16 different RWPGs make this determination at their own discretion, how can this information be compiled into a State Water Plan that is derived from uniformly consistent information?
3. **Drought Response.** CTWC supports the additional provisions relating to drought response in proposed §357.42(b)(2). However, please clarify that the drought assessments performed by the RWPGs shall encompass all Water User Groups. The

second sentence in §357.42(b)(2) implies that only Municipal Water Users are subject to this provision, since it refers to "neighboring communities" and "outdoor watering restrictions." The drought assessments envisioned in this section should encompass all Water User Groups, including Irrigation Water Users, and should expressly require the RWPGs to include a discussion on the impacts of water pricing in their Region as a tool for incentivizing water conservation in times of drought or water shortages.

4. **Recommendations for Process Improvements in Regional Water Planning.** As the current State Water Planning process has evolved since 1997, the water planning process has dramatically changed from a "top-down" method of planning to a "bottom-up" approach for developing and compiling the State Water Plan. The RWPGs have been the key to this evolution. We support the role of RWPGs in this important work, and we agree that representatives of various areas across our expansive state are well-qualified to assist in the gathering, review, and compilation of information specific to their areas. At the same time, we believe it is time for the TWDB rules themselves to provide additional structure and guidance on the membership and operation of the RWPGs. Without direct guidance from the TWDB, some RWPGs tend to continue with the same leadership and decision-making habits that were established in 1998 – over 20 years ago.

The TWDB, through rulemaking, can help to encourage new membership, ideas, and perspectives at the Planning Group level by establishing minimum criteria for RWPG structure and governance, such as:

- Establishing term limits for voting members;
- Establishing term limits for RWPG Chairs;
- Establishing residency requirements for members and alternates, so that all members and alternates reside within the boundaries of the Regional Water Planning Area they are representing;
- Acknowledging that members representing specific interests are expected to be well-informed about the interest group that they represent within the Planning Group. For example, if a member represents "Municipalities," they typically should be an employee of a municipality or do work for a municipality;
- Clarifying that members representing specific interests on the RWPG should be currently involved in the work or advocacy for the interest they represent throughout their term on the RWPG. If a member changes jobs or roles, they may nominate a successor to replace them. Replacement members should be nominated and considered by the RWPG within a certain time period after a member's change in status;
- Empowering RWPG Committees to conduct their meetings via telephone conference and/or video conference as an alternative to in-person meetings, provided that all such meetings are equally accessible to other members of the RWPG, their alternates, and all members of the public; and
- Clarifying the TWDB's expectations with respect to procurement of consultants for preparation of an RWP. Are RWPGs expected to issue Requests for Proposals before engaging a consultant for each Planning

Cycle? Can an RWPG decide to choose a consultant by acclamation at a Planning Group meeting without going out for open bids? What should RWPGs do to comply with state laws governing the huge amounts of state funds that are paid to consultants performing this work for the RWPGs? These are issues that seem unclear to some Planning Groups and the public. We respectfully ask the TWDB to include provisions addressing these issues in its rules for Regional Water Planning.

Thank you very much for your review and consideration of these comments. Please let me know if there are any questions. We appreciate the agency's focus on the important tasks associated with water planning and assuring that the future citizens of Texas will have sufficient water supplies.

Sincerely,



Jo Karr Tedder
President

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