

NOTICE OF OPEN MEETING

REGIONAL WATER PLANNING GROUP-NETRWPG

Wednesday, November 10, 2021 – 10:00 A.M.

**Region 8 Education Service Center
4845 US 271 N
Pittsburg, TX 75686**

In compliance with the Texas Open Meetings Act, Chapter 551, of the Texas Government Code, the Regional Water Planning Group D issues this public notice. On November 10, 2021 at 10:00 A.M., the North East Texas Regional Water Planning Group (NETRWPG) will meet in-person. The meeting will be held the Region 8 Education Service Center, 4845 US 271 N, Pittsburg, TX 75686. The NETRWPG will consider and act on the following items:

1. Recognitions. Roll call.
2. Public Comment/participation.
3. Review and approval of minutes for August 4, 2021 meeting.
4. Reports from liaisons: TWDB Project Manager – TWDB Planner; GMA #8 & #11; Region C & I.
5. Accept resignation of voting member, Bruce Bradley. Consider appointment of successor to the position held by Bruce Bradley. Appointment will be for the remainder of the unexpired term.
6. Discussion and Action as appropriate: Consider appointment of successor to the Executive Committee Member At-Large position, formerly held by Bob Staton. Appointment would be for the remainder of the current calendar year.
7. Discussion and Action as appropriate: Discuss the potential process for conducting interregional coordination regarding water management strategies during development of the 2026 Regional Water Plans.
8. Discussion of letter from TWDB dated September 14, 2021, about the Interregional Planning Council nominations. Consider and take action on designating at least one member to serve on the Interregional Planning Council and one alternate for each member nominated.
9. Discussion and Action as appropriate: Review, discuss, and consider taking action on changes to the Region D bylaws.
10. Discussion and action as appropriate: Discuss and consider adding a new non-voting member.
11. Report of Region D consultants.
12. Financial report by Administrator.
13. Further public comment/participation.
14. Adjourn.

Additional information may be obtained from the Administrative Agency for NETRWPG: Riverbend Water Resources District, 228 Texas Avenue, Suite A, New Boston, Texas 75570; Office Telephone: (903) 831-0091; Office Fax: (903) 831-0096; E-mail: kyledooley@rwr.org; Website: <https://rwr.org/region-d/>; Attn: Kyle Dooley, P.E., Executive Director

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 3
August 4, 2021
Meeting Minutes**

Minutes of the North East Texas Regional Water Planning Group
August 4, 2021 – 10:00 A.M.

The North East Texas Regional Water Planning Group (NETRWPG) – Region D met in an open meeting on Wednesday August 4, 2021, at 10:00 A.M. The meeting was held at the Region 8 Education Service Center, 4845 US 271 N, Pittsburg, TX 75686. Notice of the meeting was legally posted.

Jim Thompson called the meeting to order at 10:04 a.m. and welcomed everyone. Introductions were made and a quorum was present. Seventeen members of the planning group were present in person or represented by a designated alternate.

The following voting members were present:

Allen Beeler	John Brooks	Nicolas Fierro
Cindy Gwinn	Dennis Hilliard	Conrad King
Richard LeTourneau	Janet McCoy	Rolin McPhee
Fred Milton	Ned Muse	Sharron Nabors
Bob Staton	Jim Thompson	

The following alternates were present:

Marla Abernathy	Greg Carter	Jim Davis
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The following voting members were absent:

Russell Acker	Wade Bartley	Brandon Belcher	
Joe Coats	Joe Bumgarner	Lloyd Parker	Cheri Stuart

Tony Smith of Carollo Engineers made a presentation providing an overview of the Regional Planning Process.

The public was provided an opportunity for comment prior to any action being taken by the planning group. Please see the attached Public Comment forms.

Tony Smith of Carollo Engineers presented information regarding potential process for conducting interregional coordination regarding water management strategies during development of the 2026 Regional Water Plans. This included compiling a list of strategies from approved plans in the state of Texas. He then identified the strategies and course of action for coordination between Region D and Region C. No action taken.

The public was provided another opportunity for comment at this time.

- Howdy Lisenbee, City Manager for the City of Commerce, Texas requested time before the board to be considered as a voting member of the Region D Board.

Fred Milton made a motion to approve the minutes from the March 31, 2021 meeting. Dennis Hilliard seconded the motion. Motion carried, all voting aye.

Ron Ellis with Texas Water Development Board (TWDB) provided an update on TWDB. The 2022 State Water Plan was adopted on July 7, 2021. This is the result of 5 years of regional water planning compiled into a comprehensive State Plan. The regular session of the 87th legislature wrapped up at the end of May. The passing of HB1905 directly affects regional water planning. This bill removes some requirements for the planning groups. Groups are no longer required to submit an Infrastructure Financing Report to TWDB. It also removed the requirement for applicants under the SWIFT Loan program to fill out an Infrastructure Financing Survey as well as removed the requirement that planning groups prioritize projects within the State Water Plan. Another bill that passed is Senate Bill 669. It eliminated a biennial water use report that the TWDB sent to the legislature. That information is now updated on the TWDB website. House Bill 2225 gives the Texas Parks and Wildlife Department the additional duties related to the Texas Water Trust. In addition to the duties of the TWDB and TCEQ, they are also now authorized to facilitate the dedication of water rights. The previous Interregional Planning Council was dissolved with the adoption of the 2022 State Water Plan. They will be soliciting nominations for the next council this Fall. The council will submit a report to TWDB in March of 2024. The previous council's report is on the TWDB website under the section for the Interregional Planning Council. The funding for water planning is authorized in each legislative session that occur every two years. This meant that administrators for regional planning groups were required to submit funding applications multiple times during a 5-year planning cycle. A change in Chapter 355 of the Water Code regarding Regional Water Planning Grants eliminated that requirement. Now, Riverbend, the political subdivision administrator for Region D, can apply for limited reimbursement for personnel costs. Notices for committee and meeting materials also changed. The time frame for notices of committee meetings and posting of meeting materials increased from three to seven days. The notice requirement for adopting final plans increased from three days to fourteen days. Notices required for applying for funding for regional water planning has been removed. A new contract between Riverbend and TWDB to begin the 6th cycle of water planning has also been executed. TWDB is contracting with the University of Texas Bureau of Economic Geology to assess mining water use and to update the mining water projections for the current planning cycle. A stakeholder survey developed for round five of regional water planning has an anticipated distribution date in August of 2022. The survey will ask for feedback on TWDBs staff assistance with planning, on planning group administration and, on planning for educational resources. Mr. Ellis then provided links to the TWDB Water Planning, best management practices guide, the Rules document, contracts, the studies on the use of mining water, and any other TWDB activities.

Sharron Nabors stated that GMA #8 and Region C had no new updates.

John McFarland stated that Region I has held one meeting for this planning cycle and plans another for August 18, 2021. An update for GMA #11 is that due to TWDBs revision to the ground water availability model, GMA #11 had to run scenarios on projected pumping an aquifer levels drawdown. Those scenarios yield a decrease in aquifer levels throughout the region. Those aquifer levels will affect Region Ds projects.

Ron Ellis with TWDB played a recorded a presentation on Statewide Aquifer Storage & Recovery (ASR) Study or Aquifer Recharge (AR). This study was legislatively mandated to determine the suitability of aquifers for ASR or AR projects. Aquifer Storage & Recovery

uses wells to inject water into an aquifer for the purpose of subsequent recoveries and beneficial use. Aquifer Recharge is the intentional recharge of an aquifer may not be done for full recovery of the water from an aquifer but instead for other reasons, such as reducing the decline in the water table or improving water quality. In 2019 the Texas Legislature passed HB721 directing TWDB to survey aquifer storage and recovery and aquifer recharge potential for the state. The survey, conducted with HDR Engineering, identified areas in Texas with three important components for a successful ASR or AR project. The Hydro-geological Perimeter Screening identified aquifers with appropriate characteristics. The Excess Water Screening identified sources of water to inject or infiltrate and the Water Supply Needs Screening identified water demands for such projects. The scores from these three screenings were combined for a relative final suitability rating all across Texas. The results were published in December 2020.

Jim Thompson, Chair, asked for a motion to authorize Riverbend Water Resources District (Riverbend) to execute a contract with Carollo Engineers to be the Technical Consultants for the 2026 Regional Water Plan for Region D. Kyle Dooley, Executive Director/CEO explained that the board reviewed proposals and selected Carollo Engineers as the technical consultant. Ned Muse made a motion to authorize Riverbend to execute a contract with Carollo Engineers. John Brooks seconded the motion. Motion carried, all voting aye.

Jim Thompson asked for discussion regarding approval changes to the Region D Bylaws. Some changes were updating the name and address of the Administrator. Other changes were suggestions for the Board to consider. The Board decided that discussion and a vote would be postponed until the next board meeting. Kyle Dooley stated that he will accept suggestions for any additional changes to the Bylaws via email. No action taken.

Jim Thompson presented the list of expiring terms of office for current voting members on the Region D Board as well as their successor. Terms of each position are for 3 years, commencing on September 1, 2021. Selection process for positions will consider any additional nominations from voting members. Positions to be appointed include positions currently held by Wade Bartley, Sharron Nabors, Joe Coats, Jim Thompson, Bob Staton, Dennis Hilliard, Cheri Stuart, and Brandon Belcher. The Executive Committee met before the board meeting and unanimously recommended to the board the following nominations: Sharron Nabors, Joe Coats, Jim Thompson, and Brandon Belcher to serve another term, as well as Wade Bartley to be replaced by Andy Easley, Dennis Hilliard to be replaced by Richard Garza, Cheri Stuart to be replaced by Billy Henson, and Bob Staton to be replaced by Bob Tardiff. Mr. Thompson asked Mr. Dooley to research what needed to be done in order to allow Howdy Lisenbee to become a member of the Region D Board. Ned Muse would like Mr. Lisenbee appointed as his official alternate. Sharron Nabors made a motion to approve the appointees as listed and as recommended by the Executive Committee. Fred Milton seconded the motion. Motion carried, all voting aye.

Rolin McPhee asked if we could look into alternate methods for allowing those that are not permitted to attend meetings in-person due to travel restrictions placed on board members by their employers with regards to the ongoing pandemic.

Discussion was also held regarding the next meeting. It should be close to the end of October or early November. Kyle Dooley will send a reminder out once a date is selected.

Rolin McPhee made a motion to adjourn the meeting. Richard LeTourneau seconded the motion. Motion carried, all voting aye to adjourn the meeting at 12:18 p.m.

Secretary

Date

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 5
Resignation of Voting Member**

Administrative Summary

Staff recieved an email from Bruce Bradley on Tuesday, July 27th, 2021, submitting his resignation from the Region D WPG. The agenda had already been posted for the last meeting prior to recieving the resignation and so this item had wait for consideration on this agenda. The item on the agenda would be to consider accepting the resignation and opening up this position to nominations as called for in the bylaws. The bylaws call for opening the position for nominations within 45 days of the acceptance of the resignation and having a deadline for nominations between 30-45 days from the date the public notice is posted. If this item is approved the plan would be that nominations would be brought back to the Executive Committee and the full voting membership at the next meeting. Mr. Bradley did have a nominee in his resignation letter. It was Marla Abernathy and she is currently his designated alternate.

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 6
Appointment of Successor to the
Executive Committee Member At-Large
Position**

Administrative Summary

There is an opening on the Executive Committee for one of the Member At-Large positions. Bob Staton was the previous member that held this position. Nominations can be made from the floor by voting members. To appoint a replacement officer it will take at least a two-thirds majority vote of the voting members present.

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 7
Interregional Coordination Discussion**

Administrative Summary

At the last board meeting, there was a presentation of the potential water management strategies that could lead to the need for interregional coordination during the sixth cycle of planning. This potential list came from a list of the strategies from the previously adopted plan. When the topic of discussing the process by which to handle any interregional coordination, the voting members wanted to review what had been presented and discuss the potential process at this upcoming meeting. Also, attached in the packet is a draft letter from Jim Thompson, Chair for Region D WPG, to Region C WPG discussing potential projects that could lead to coordination between the two WPG's during this cycle of planning. Mr. Thompson would like to have discussion about this draft letter as part of this agenda item also.

NORTH EAST TEXAS REGIONAL WATER PLANNING GROUP - D

Executive Committee

Jim Thompson
Chair

Richard LeTourneau
Vice Chair

Rolin McPhee
Secretary

Joe Bumgarner
At-Large

Voting Members

Russell Acker
Counties

Allen Beeler
Environmental

Brandon Belcher
Environmental

Bruce Bradley
Agriculture

John Brooks
Public

Joe Coats
Environmental

Donnie Duffie
Electric
Generating
Utilities

Andy Easley
Counties

Nicolas Fierro
Water Districts

Richard Garza
Agriculture

Cindy Gwinn
Industries

Conrad King
River Authority

Janet McCoy
Small Business

Fred Milton
Water Districts

Ned Muse
Municipalities

Sharron Nabors
Agriculture

Lloyd Parker
Water Utilities

Billy Henson
Industries

Bob Tardiff
Municipalities

Harlton Taylor
Water Utilities

Mr. J. Kevin Ward
Chair, Region C Water Planning Group
Trinity River Authority of Texas
P.O. Box 60
Arlington, Tx 76004-0600
wardk@trinityra.org

Dear Mr. Ward:

The North East Texas Regional Water Planning Group (Region D) has authorized the submission of this letter to you as Chair of the Region C Water Planning Group to notify the Region C Planning Group of a potential conflict between our two plans and to enhance interregional coordination efforts going forward.

Obviously, we are at the beginning of the planning cycle and very early on in the process. However past experiences between our Regional Water Planning Groups regarding conflicts and potential conflicts have shown that early identification and discussions of any potential conflicts can be helpful. The Interregional Planning Council Report to The Texas Water Development Board dated October 16, 2020 stressed the importance of identifying issues and potential interregional conflict concerns at the beginning and throughout the planning cycle.

We realize that final decisions on potential projects for the upcoming Regional Water Plan have not occurred. However, we are also aware that Region C has consistently included the potential Marvin Nichols Reservoir as a future water supply source in its Plans. We also know that for at least the last twenty (20) years, Region D has included language in its Plans that expressly states that Marvin Nichols Reservoir should not be included in the State Water Plan or any Regional Water Plan because it does not protect the economic, agricultural and natural resources of the region and of Texas and that the development of this project would have a substantial adverse effect on our region as a result of the impacts the reservoir would cause. I have attached with this letter Section 6.9 and Section 6.10 of the most recent approved Region D Water Plan which details the concerns our Region has regarding the proposed Marvin Nichols Reservoir.

It is certainly our hope that our two groups can avoid a conflict on this issue. We are willing to take all reasonable measures to do so. Those efforts could include coordinating and exploring other viable measures to increase water supply sources for Region C in the future as well as decreasing future demand, including but not limited to fully utilizing water supplies in existing reservoirs, potential reallocation of water resources in existing reservoirs, additional reuse beyond what is proposed in the Region C Water Plan, and increased water conservation.

We are sending a copy of this letter to representatives of the Texas Water Development Board. It is our desire that a conflict be avoided if at all possible and hopefully, both regions can work toward that goal.

Thank you for your consideration.

Very truly yours,

**Jim F. Thompson
Chair, Region D
Water Planning Group**

**cc: Mr. Jeff Walker
Executive Administrator
Texas Water Development Board
1700 N. Congress Ave.
Austin, Tx 78701**

**Temple McKinnon
Temple.McKinnon@twdb.texas.gov**

**Ron Ellis
Ron.Ellis@twdb.texas.gov**

6.7.2 Navigation

As noted in Chapter 1, while the lack of perennial streams limits the viability of navigation projects in northeast Texas, there are several notable navigation projects either in the region or affected by streamflows from the region. None of the recommended water management strategies proffered herein are expected to exhibit impacts on navigation within the region. Conservation, groundwater wells, reuse, and contractual strategies will not impact navigation of surface waters, and the recommended surface water strategies considering development of infrastructure utilize existing surface water supplies and not affect navigation of streams in the region.

6.7.3 Parks and Public Lands

The NETRWPA contains numerous state parks, forests, and wildlife management areas. In addition, there are a number of city parks, recreational facilities, and public lands located throughout the region. None of the water management strategies evaluated for the 2021 NETRWP are expected to adversely impact parks or public land. The development of additional groundwater resources could ultimately reduce the reliance on water from surface water resources. Where possible, reducing the need for diversions from surface water sources may enhance recreational opportunities.

6.7.4 Energy Reserves

Numerous oil and gas wells are located within the NETRWPA, including the Hawkins Oil Field and the majority of the East Texas Oil Field. In addition, significant lignite coal resources can be found in the NETRWPA under portions of 15 counties. These resources represent an important economic base for the region. None of the water management strategies recommended by the NETRWPG are expected to significantly impact oil, natural gas, or coal production in the NETRWPA.

6.8 Consistency with State Water Planning Guidelines

To be considered consistent with long-term protection of the State's water, agricultural, and natural resources, the NETRWP must be determined to be in compliance with Texas Administrative Code (TAC) 31, Chapters 357.40, 357.41, 358.3(4) and (9).

The information, data evaluations, and recommendations included in Chapters 1 through 12 of the NETRWP collectively comply with these regulations.

6.9 Marvin Nichols I Reservoir and Impacts on Water Resources, Agricultural Resources and Natural Resources

Although not a recommended water planning strategy for the NETRWPG for this round of planning, Marvin Nichols I Reservoir was a recommended water management strategy for Region C in 2011 and 2016, and was included in the 2012 and 2017 State Water Plans. A larger Marvin Nichols reservoir has also been included in Region C's drafts as a proposed water management strategy for this round of planning. Since all proposals for Marvin Nichols reservoirs would be located exclusively in the North East Texas Region, and the impacts to agricultural and natural resources would be greatest in this Region, the NETRWPG feels it is important and necessary to review the impacts that any such Marvin Nichols reservoir would have to this area. This is particularly true since the spirit of Texas' regional water planning process includes a ground up, localized approach to the planning process. The discussion below will apply to the Marvin Nichols I/IA Reservoir, since it was included in the 2017 State Water Plan, but the approach applies to any proposed reservoir in the Sulphur River Basin.

Based on the reasons set forth below, it has been and continues to be the position of the NETRWPG that Marvin Nichols I Reservoir should not be included in any regional plans as a water management strategy and not be included in the 2022 State Water Plan as a water management strategy. The NETRWPG continues to oppose any Marvin Nichols type reservoir. The NETRWPG also has not yet seen an adequate evaluation by Region C of the impacts of such a reservoir on water, agricultural and natural resources of the state and on Region D. The NETRWPG supports its positions with both the facts set out in its previous 2011 and 2016 Region D Plans, including information provided again below that have come from evaluations of the needs for instream flows to protect flood plain forests that exist downstream of the proposed reservoir. It is the position of the NETRWPG that all proposals for Marvin Nichols reservoirs developed by Region C are based on the impoundment and use of water that NETRWPG needs to protect these downstream agricultural and natural resources.

Per the terms of agreement set forth from the October 5, 2015 mediation between Regions C and D and ratified by the NETRWPG at its October 21, 2015 meeting, the NETRWPG does not challenge Marvin Nichols Reservoir as a unique reservoir site for the purposes of this Plan. At the time of publication of this Regional Water Plan, no agreement has been made between Regions C and D for the purposes of the 2021 Region D Plan.

6.9.1 Impacts on Agricultural Resources

Agriculture as a whole and timber in particular are vital and important industries throughout the NETRWPA, as illustrated in Chapter 1, Figure 1.11, wherein timber is listed in 12 of the 19 counties as a principal crop.

Estimates developed for the USACE and Sulphur River Basin Authority (SRBA 2013) reflect that Marvin Nichols I Reservoir would flood 66,103 acres, mainly in Red River County and including portions of Titus, Franklin, Delta, and Lamar Counties. Within that study, a high-level desktop analysis using available land coverage data from the TPWD Ecological Systems Classification, and EPA concluded that included in the flooded acreage would be 31,600 acres of forest lands, including an approximation of 10,156 acres of Priority 1 bottomland hardwoods potentially classified as waters of the U.S. (SRBA Environmental Evaluation Interim Report, Sulphur River Basin Comparative Assessment, 2014). Specifically to differentiate bottomland hardwood forest by that area potentially characterized as “waters of the U.S.,” dubbed “Forested Wetland,” an extra GIS filter was employed using the U.S. Fish and Wildlife Service National Wetlands Inventory data coverage.

While the SRBA study suggests that the amount of bottomland hardwood forest characterized as waters of the U.S., i.e., “Forested Wetland” potentially impacted by the proposed Marvin Nichols reservoir is 10,156 acres, the amount reported in the TWDB 2008 Reservoir Site Protection Study is reported as 26,309 acres (Table 5-37, pg. 100, utilizing a methodology performed by the Texas Parks and Wildlife Department, TPWD, described in Appendix C of that report). A possible reason for this significant difference may be the extra filtering noted above to differentiate between bottomland hardwood forest, and “Forested Wetland,” which is used for their calculation of “waters of the U.S.” While the difference in the overall acreage between the 2008 TWDB study and the more recent SRBA study is less than 2%, the reported difference in impacts on potentially mitigable bottomland hardwoods has decreased by approximately 16,153 acres, or more than 60%.

More recent analyses performed for the SRBA (as reported in Timberland and Agricultural Land Impact Assessment for Selected Water Resource Options in the Sulphur River Basin, SBG 2015) have indicated the impacted acreage from the Marvin Nichols Reservoir project to be 66,216 acres, assuming a reservoir elevation of 328 ft-NGVD. Additional information developed for the SRBA in early 2015 indicated that, “recent droughts had impacted the estimated firm yield of reservoirs within the Sulphur Basin to a greater

extent than anticipated and that a larger scope of the Marvin Nichols project should be evaluated.” This more recent study thus adopted a “more refined” approach to evaluate timber resources. The results indicated that approximately 42,019 acres of timber, 22,854 acres of agriculture, and 1,343 acres of “other” wildlife area would be impacted by the Marvin Nichols Reservoir project. The estimated value of these impacts totals approximately \$28.3 million (\$24.7 million timber value, \$3.6 million agricultural value).

Ultimately, these studies provide a useful example of the uncertainty underlying the planning-level characterization of the significance of impacts from the Marvin Nichols I Reservoir on the timber industry in the North East Texas Region, and the importance of field verification and further detailed analysis.

In addition to the timber and agricultural land lost as a result of the reservoir, mitigation requirements are anticipated to significantly impact agricultural resources. The recent SRBA study of the Sulphur River Basin (specifically the Cost Rollup Report) concluded that approximately 47,060 acres would be necessary for mitigation. This methodology was based upon the application of a 2:1 ratio applied to the aforementioned calculated acreage of 23,530 acres of “water of the U.S.” within the footprint of the proposed reservoir. This information was then incorporated into the 2016 Region C Water Plan.

The results of the SRBA Study were used as the basis for the 2014 analysis for Region C entitled, “Analysis and Quantification of the Impacts of the Marvin Nichols Reservoir Management Strategy on the Agricultural and Natural Resources of Region D and the State.” This analysis compiled information developed during the SRBA study for use in the TWDB’s conflict resolution process between Region C and Region D performed for the purposes of the 2016 regional water planning process.

Region D prepared a three-part response to Region C’s analysis. In the first part of this response, Trungale (2014) concluded that the impacts on priority bottomland hardwoods due to the reservoir and its impacts on flows would be significant:

“Development of the Marvin Nichols Reservoir project as proposed in the Region C water plan would permanently flood a large proportion of the last remaining intact bottomland hardwoods (BLH) in East Texas. It would also result in a massive reduction in flows remaining in the river downstream of the proposed reservoir project which would result in significant, likely catastrophic, harm to an even larger bottomland hardwood forest area. As the plan acknowledges “Marvin Nichols Reservoir will have significant environmental impacts.” (Region C 2011, p 4D.11)”

These bottomland hardwoods habitats are important natural resources that are dependent on maintenance of instream flows.

“Floodplains with BLH and other ecologically important habitats are one of most altered and imperiled ecosystems on Earth (Opperman et al. 2010). The unique importance of this BLH ecosystem is largely based on its extensive swamp communities sustained by an active regime of high and overbank flows. More than any other factor, the sustainability of ecosystem processes within floodplains depends upon the longitudinal and lateral hydrologic connections that would be severed by the proposed reservoir.”

Trungale (2014) further concluded based on analysis of modeling provided by Region C that operation of Marvin Nichols as proposed by the Region C Plan would not protect these important natural resources.

“As currently modeled, the proposed Marvin Nichols I reservoir will not provide sufficient frequency and duration of high and overbank flows to sustain downstream BLH forest....Analysis of results generated by the water availability modeling (WAM), developed to evaluate this reservoir project, indicate that the flows needed to maintain these forests would

be severely diminished, if not entirely eliminated. The environmental flow requirements used to evaluate the Marvin Nichols Reservoir Water Supply Project are based on an approach developed in the 1990's called the "Consensus Criteria". Unlike the more recent environmental flow criteria developed as part of SB3, there are no requirements, under the consensus criteria, to pass any high flow pulse flows. The maximum pass through for the proposed Marvin Nichols Reservoir Project, as required by consensus criteria, would be 514 cfs in May and then only if the reservoir is greater than 80% full.

The clearest problem with the Region C report is that it contains no analysis or quantification of downstream impacts. Data and methodologies to perform this type of analysis, even at a planning level, are readily available. In 2004, the TWDB and the U.S. Army Corps of Engineers (USACE) conducted a study on the Sulphur River (TWDB 2004). Direct observations and technical evaluations reported in this study indicate that flows in the range of 862 cfs (approximately 50,000 ACFT per month) are transitional between in-channel and overbank flow.

An analysis of the outputs from the water availability model, developed by Region C to evaluate the Marvin Nichols project, show that under existing conditions, there is only one year, out of the 57-year record, in which flows did not exceed this threshold volume in at least one month. When the proposed reservoir is included in the simulation, this number jumps to 29 years (more than half of the time) when no overbank events occur. The longest duration of time in which no over bank event occur under the without project scenario is 16 months; the flow regime resulting from the proposed reservoir indicates that at two separate times in the record, the river would go 80 months (almost 7 years) without overbank flow events. These flow rates, based on the 7Q2 water quality target, are intended to sustain the river during brief, infrequent and severe droughts, but with the Marvin Nichols project as proposed and modeled by Region C, these extremely low flows would occur much more frequently."

The impact of flow alteration due to the Marvin Nichols Reservoir on downstream forests does not appear to have been considered in the recent Region C analyses. These losses as well as the losses within the reservoir footprint represent a significant impact on natural resources in Region D. From Trungale (2014):

"The lack of seasonal flooding identified in the water availability results indicates BLH forests cannot be maintained downstream of the proposed Marvin Nichols reservoir. When the effect on flows and the loss of episodic inundation are added to the impacts resulting within the reservoir footprint, the impacts from the Proposed Marvin Nichols Reservoir Project are huge. In the Sulphur basin 44% of the Forested Wetland area and 17% of the Bottomland Hardwood Forests would be at significant risk. By completely ignoring the largest and most significant impacts to natural resources resulting from the Marvin Nichols Reservoir Water Supply project, the Region C report does not meet the requirements of the TWDB order."

In a separate section of Region D's 2014 response to the 2014 Region C analysis, Sharon Mattox, Ph.D., J.D., concluded that the Region C report "fails to provide reasonable quantification of impacts." This report cites a relatively recent major change in the means of determining mitigation, identifying that the U.S. Army Corps of Engineers and the U.S. EPA published their final rule, "Compensatory Mitigation for Losses of Aquatic Resources," better known as the "2008 Mitigation Rule." As noted in Mattox (2014):

"The policies and procedures laid out in the 2008 Mitigation Rule render it improper and utterly illogical to conduct an analysis of a future project based solely on historical information (even if Region C had gathered accurate and relevant historical data). Under well-developed tools and

practices stemming from the 2008 Mitigation Rule, losses of functions and values are the emphasis and simple ratios are not the touchstone. If a ratio is used, that ratio should be in the range of 3:1 to 10:1."

Mattox (2014) further notes:

"Initially, the Report estimates impacts only for the inundation area of the Reservoir itself – that is, the footprint of reservoir. The Report fails to estimate jurisdictional areas for the 2,751 acres of "ancillary facilities" recognized in the [2011] Region C Plan. The ancillary facilities must be part of the USACE permit, which must assess the complete project. In addition, the Report fails to include any estimates for lands used during the construction process. The estimate also fails to include any estimate of critical secondary impacts to waters of the U.S., which will also require mitigation if losses of waters of the U.S. result. One example of a secondary impact that would likely have a material impact is wetlands adjacent to the Sulphur River downstream of the proposed dam that will no longer be inundated by frequent flood events."

Mattox (2014) summarizes the characterization of potential mitigation thusly:

"The 23,530 acre estimate of jurisdictional areas is not consistent even with the data on land coverage types... Based on my review of the EEIR-SRBCA, I would include the estimated acreages for bottomland hardwoods, forested wetlands, herbaceous wetlands, open water, and shrub wetland. In addition other habitat types identified ... as subtypes under Grassland/Old Field, Shrubland, and Upland Forests that are not broken out but likely qualify as waters of the U.S., include Pineywoods: Bottomland Wet Prairie, Pineywoods: Small Stream and Riparian Wet Prairie, Pineywoods: Small Stream and Riparian Evergreen Successional Shrubland, and Pineywoods: Small Stream and Riparian Temporarily Flooded Mixed Forest.

The total of only the habitat types listed Table 2 of the Report is 35,411 acres, which I believe to be a more realistic estimate of the number of acres that require mitigation, if one is limited to the numerical data provided in the Report. This number, however, still excludes the additional habitat types given above, which will also contain jurisdictional areas. It further excludes the small, but identifiable wetlands, streams, and other waters that are certainly present in other habitat categories. Although no data on these omitted waters is included, it would certainly increase the realistic minimum number of jurisdictional waters of the U.S. For planning purposes, an estimate of at least 40,000 jurisdictional acres is reasonable."

Noting that historically, all required mitigation has occurred in the watershed of the reservoir, Mattox (2014) indicates that, "given that the watershed approach is a central focus of the 2008 rule, all mitigation required for the [Marvin Nichols I] strategy must certainly occur within Region D," ultimately opining:

"...[T]he mitigation required for the [Marvin Nichols I] strategy will require at least 3 times as much land as the acres of jurisdictional waters, and potentially much more. Any of the reasonable estimates suggest the mitigation land required for the [Marvin Nichols I] strategy will exceed 100,000 acres..."

Another previous study by the Texas Parks and Wildlife Department (TPWD)/United States Fish and Wildlife Service (USFWS) concluded a minimum of 163,620 acres would be required for mitigation and that number could be as high as 648,578 acres. "The Economic Impact of the Proposed Marvin Nichols I Reservoir to the Northeast Texas Forest Industry" prepared by the Texas Forest Service dated August 2002 estimated that

the total acres affected by Marvin Nichols I Reservoir could be as low as 258,000 acres or as high as 820,000 acres. "The Economic, Fiscal and Developmental Impacts of the Proposed Marvin Nichols Reservoir Project" dated March 2003 by Weinstein and Clower prepared for the SRBA stated a lower acreage loss, estimating agricultural land loss of 165,000 to 200,000 acres.

It is understood that the exact amount and location of the mitigation acreage is unknown. However, in analyzing impacts to agricultural and natural resources in the NETRWPG area, it is clear that vast amounts of agricultural acreage will be removed from production due to flooding and mitigation requirements associated with Marvin Nichols I Reservoir. These impacts are corroborated in "Table P.1: Summary of Evaluation of Water Management Strategies" as follows: "Agricultural Resources/Rural Areas" are rated high" and "Possible Third Party" are rated "high". Third Party impacts are considered to be social and economic impacts resulting from redistribution of water.

6.9.2 Impacts on Timber Industry

The Texas Forest Service Study dated August 2002 estimated that the forest industry and local economies would incur significant losses due to a substantial reduction in timber supply from the reservoir project and required mitigation. The study further detailed that manufacturing facilities such as paper mills located near the proposed site which are dependent on hardwood resources would be impacted the most. The NETRWPG has previously received oral and written commentary from Graphics Packaging International, (formerly International Paper Company), which operates a paper mill in Cass County, Texas, and from numerous other timber companies, logging contractors and related industries stating that Marvin Nichols I Reservoir and the mitigation associated with the project would place their industries in peril due to the loss of hardwood timber supplies.

The Texas Forest Service Study estimated forest industry losses based on three (3) separate mitigation options. The low end impacts were estimated to be an annual reduction of \$51.18 million output, \$21.89 million value-added, 417 jobs and \$12.93 million labor income. The high end impacts were estimated to be annual loss of \$163.91 million industry output, \$70.10 million value-added, 1,334 jobs and \$41.4 million labor income.

The Weinstein and Clower Study dated March 2003 estimated as much as 200,000 acres of agricultural land, including 150,000 acres of timberland, could be removed from production. However, the study opined that based on assessment U.S. Forest Service inventories, those inventories along with growth could offset the loss of timberland due to reservoir impoundment and mitigation. The study also indicated that the loss to the timber industry should be limited to additional transportation costs associated with assessing new regional sources of timber.

The Weinstein and Clower Study has been criticized on the following grounds:

1. The Weinstein and Clower Study used total U.S. Forest Service timber inventories throughout the region in arriving at its conclusion that the inventories together with the growth of those inventories would offset any losses due to reservoir impoundment and mitigation. It did not take into account that large amounts of this acreage is unharvestable because it is located in wildlife management areas, streamside management zones, parks, housing areas and other areas which cannot be harvested. In addition, it is well documented that hardwood acreage throughout Northeast Texas as well as the State as a whole is decreasing due to development, conversions of hardwood areas to production of pine plantation acreage, and inundation for water development projects. See "An Analysis of Bottomland Hardwood Areas" report to TWDB dated February, 1997.

2. The Weinstein and Clower Study fails to distinguish between timber inventories as a whole (which includes more pine than hardwood) and hardwood timber inventories. Many of the timber industries in Northeast Texas, such as paper mills and hardwood sawmills, are dependent upon a reliable and affordable supply of hardwood timber. Hardwood timber grows predominantly in bottomlands and thus would be more severely impacted by the reservoir project and required mitigation than other timber species.
3. The Weinstein and Clower Study acknowledges that transportation costs would be greater with Marvin Nichols I in place as timber companies would be required to purchase timber from farther distances. These additional costs would have a huge impact on the timber industry in Northeast Texas. Timber is a heavy product and the transportation cost of timber is a substantial factor, particularly taken in conjunction with the current high cost of fuel. The industries involved compete in a global market. Additional transportation costs and additional costs in obtaining raw materials will jeopardize their ability to compete in this global market. This is particularly important considering the number of manufacturing jobs already lost due to rising costs of manufacturing products in the United States.
4. The Weinstein and Clower Study used a mitigation factor of 1.54 to 1, citing that ratio as the mitigation required by the most recently developed reservoir in Texas. It is widely believed that the estimates by the TPW/USFWS Study and the TFS Study are more accurate estimates based on the detailed analysis of the actual acreage to be mitigated rather than a recent mitigation requirement from a totally different type of habitat. In addition, Cooper Lake in Northeast Texas had 5,900 acres of bottomland hardwood and required total mitigation of 31,980 acres throughout Northeast Texas.
5. Finally, additional skepticism of the Weinstein and Clower Study is based on the knowledge that funding for the Study came from Dallas-Fort Worth entities which would benefit from and utilize the water supplies from Marvin Nichols I Reservoir.

As noted previously, results from SBG (2015) developed for the SRBA indicated that approximately 42,019 acres of timber, 22,854 acres of agriculture, and 1,343 acres of "other" wildlife area would be impacted by the Marvin Nichols Reservoir project. The estimated value of these impacts totals approximately \$28.3 million (\$24.7 million timber value, \$3.6 million agricultural value). The 2016 Region C Water Plan similarly reported potential impacted acreage of timberland to be approximately 42,823 acres. However, it is noted that both of these analyses focused upon the acreage potentially inundated within the reservoir, and did not include an analysis of acreage impacted by potential mitigation.

6.9.3 Impacts on Farming, Ranching and other Related Industries

The studies cited above deal only with the timber industry in Northeast Texas. Marvin Nichols I Reservoir and required mitigation would also impact areas which produce wheat, cotton, rice, milo, hay, soybean, and alfalfa. In addition, acreage currently being utilized for beef cattle, dairy cattle, poultry and hog production would be affected. The NETRWPG has received numerous oral and written comments from individuals involved in the production of these agricultural commodities, along with others in agribusiness industries, reflecting negative impacts from the potential development of Marvin Nichols I Reservoir.

6.9.4 Impacts on Natural Resources

Additional commentary has been previously received from the NETRWPG concerning negative impacts on natural resources such as lignite and oil and gas reserves located in and near the reservoir site. See Chapter 1 Figures 1.7 and 1.9 for maps of oil and gas as well as lignite resources. "Table P.3: Strategy Evaluation Matrix" as presented in the 2016 Region C Plan corroborates the negative impacts of Marvin Nichols I upon "Other Natural Resources" in its rating of "medium high." Additional concerns have been expressed from

landowners regarding economic losses from hunting leases, grazing leases and timber sales. These impacts are again corroborated in the aforementioned table from the 2016 Region C Water Plan, rating the impacts of Marvin Nichols I upon "Agricultural Resources/Rural Areas" as "high" and "Possible Third Party" as high.

In addition, if Marvin Nichols I Reservoir is built the footprint will sit squarely on top of the outcrop of the Nacatoch Aquifer. Local residents report there are dozens of springs and thousands of sand boils. Man-made alterations include water wells, undocumented seismograph holes and unplugged oil wells. Residents' concern is that heavy metals settling to the bottom of the reservoir will contaminate the aquifer below.

6.9.5 Impacts on Environmental Factors

Region C's 2016 planning process provides a summation of significant negative environmental impacts in "Table P.4: Environmental Quantification Matrix." Marvin Nichols Reservoir would cause "High" habitat impacts, "Medium High" impacts to cultural resources, and "Medium" impacts to environmental water needs. "High" is the highest category for negative impacts given to any strategy. This includes 24,093 acres of wetlands impacted and 23 threatened/endangered species.

Although the NETRWPG opposes any Marvin Nichols type reservoir, the NETRWPG notes that other potentially feasible alternatives, such as reallocation of flood pool storage in Wright Patman Reservoir, do exist in the Sulphur River Basin. Evaluations considering the feasibility of this strategy have been performed as part of the aforementioned SRBA Sulphur River Basin Feasibility Study, an ongoing effort on the part of the USACE and SRBA to evaluate potential water supply alternatives in the Sulphur River Basin.

A modified WAM for the Sulphur River Basin, and conditions representing full demands of existing water rights with no discharges (i.e., Run 3), was used in this study to evaluate three reallocation scenarios with conservation elevations of 232.5 ft., 242.5 ft., and 252.5 ft. The results from these analyses conclude that the available firm supply from reallocation of Wright Patman reservoir ranges from 415,000 ac-ft/yr, to 730,400 ac-ft/yr, and up to 1,004,100 ac-ft/yr, depending upon the amount reallocated from flood storage². It is noted, however, that more recent modeling reflecting updated hydrology may decrease these amounts due to a more recent drought of record in the Sulphur River Basin.

Analyses of potential unit costs of alternative water supplies from the Sulphur River Basin are presented within the *Cost Rollup Report – Final* for the SRBA study. Through a series of planning level analyses, the study identified 12 alternatives having unit costs under \$650 per acre-foot during debt service (after debt service, these 12 most cost effective alternatives remain the least expensive). These seven alternatives are comprised of some combination of the following components:

- Marvin Nichols 328'
- Marvin Nichols 313.5'
- Wright Patman 232.5'
- Wright Patman 242.5'
- Talco 350' – Configuration 1
- Talco 370' Configuration 1
- Parkhouse I
- Parkhouse II

It is then concluded that "[i]n general, the larger Marvin Nichols scales, the smaller Wright Patman scales, and the Talco alternatives appear to merit further consideration, at least on the basis of unit costs."

² Taken from *Technical Memorandum on Hydrologic Yields – Sulphur River Basin Feasibility Study*, 08/26/2014.

As noted in the SRBA's Socioeconomic Study of the Sulphur River Basin, "the analysis of socioeconomic resources identifies those aspects of the social and economic environment that are sensitive to change and that may be affected by actions associated with the development of water resources in the Sulphur Basin." Regional economic development effects were estimated using the MIG, Inc. IMPLAN modeling software for the construction and operation of alternative reservoir scenarios, with all costs and impacts expressed in 2014 dollars. Study areas for each of 12 reservoir scenarios were defined via the adjacent counties to each reservoir alternative. The resultant comparisons between modeled estimates of employment and labor income generated during construction and during project operations demonstrate that the considered Wright Patman Reservoir scenario offers the greatest induced, indirect, and direct effects of all the scenarios analyzed.

The *Environmental Evaluation Interim Report, Sulphur River Basin, Comparative Assessment* produced as part of the SRBA Sulphur River Feasibility Study provides consideration of potential environmental concerns associated with the development of additional water supply within the Sulphur River Basin. Preliminary environmental analyses were performed to, "...help with the identification of potential impacts and constraints..." to the considered potential reservoir sites under evaluation. Readily available information regarding land cover/resources, wetlands, bottomland hardwoods, water quality, archeological resources, instream uses, groundwater, and state and federally listed threatened or endangered species was gathered and reviewed. This information was analyzed within the footprint of each alternative reservoir site to develop a structured assessment. Rankings were then developed based on the identified impacts/constraints. With regard to the Marvin Nichols and Wright Patman reservoir scenarios, the report states:

"The Marvin Nichols project is representative of a more downstream location for new storage within the Sulphur River Basin. At least five locations for this dam have been considered in previous studies. In general, these alternative sites represent an attempt to locate the impoundment so as to avoid conflicts with Priority 1 bottomland hardwood habitats and oilfield activity while maintaining yield. A potential reservoir at the Marvin Nichols 1A site ...was identified as a recommended strategy for [the North Texas Municipal Water District, Upper Trinity River Water District, and the Tarrant Regional Water District] in the 2006 and 2011 [Region C] plan. The Marvin Nichols 1A site is also recommended for protection in the Reservoir Site Protection Study."

and

"Wright Patman Lake is an existing reservoir located on the Sulphur River in Bowie and Cass Counties, Texas. The top of Wright Patman Dam is at elevation 286 ft. msl. In terms of normal operations, elevation 259.5 ft. msl is considered the top of the flood control pool. At this elevation, Wright Patman Lake would have a cumulative storage capacity of 2,659,000 acre-feet. Theoretically, reallocation of almost any portion of that flood storage is possible. In a practical sense, reallocations are typically limited by either the need to maintain a large amount of flood control storage in order to protect downstream lives and properties, or the constraint on the increase in dependable yield that can be obtained as a result of limited water rights availability, or both. For the purposes of this analysis, the assessment of potential impacts to resources was estimated for two scenarios: 1) the portion of the flood pool from the existing top-of-conservation-pool elevation of 227.5 ft msl up to 237.5 ft. msl. (i.e., an increase of 10 ft. msl. in the conservation pool) and 2) the entire flood pool from the existing top-of-conservation-pool elevation of 227.5 ft. msl. up to 259.5 ft. msl."*

** The existing top-of conservation-pool elevation of 227.5 ft. msl. was determined by calculating an average for seven years of daily water surface elevations recorded by the USGS Gage (Wright Patman Lk nr Texarkana, TX) located at Wright Patman Lake from February 2006 to February 2013."*

Based on the SRBA study's review of cultural resource records and environmental data, it is reported that the Lake Jim Chapman reallocation and Lake Wright Patman minimum reallocation (237.5 ft. msl.) have the "Lowest Impacts", while the Parkhouse I, Parkhouse II, and Wright Patman maximum reallocation (259.5 ft. msl.) have "Moderate Impacts." Significantly, the Talco and Marvin Nichols 1A scenarios were determined to have the "Highest Impacts."

The comparative environmental assessment performed for the Sulphur River Basin Feasibility Study provides a structured comparative assessment of the potential impacts associated with the alternative reservoirs considered. Significant questions remain regarding the specifics of the methods employed in deriving the impacts on archeological resources, bottomland hardwoods, wetlands, the overall rankings, and the individual weight of each ranking in contributing to the overall rankings. However, although such questions remain, the results of the analysis are informative. A comparison is summarized and presented in the SRBA study via a matrix of rankings, presented in Table 6.17.

Although the full reallocation of Wright Patman Reservoir is presented as having the greatest overall ranking (7 = most impact), it is noteworthy that the lower reallocation of Wright Patman (237.5 ft. msl.) is considered to have a lesser impact than that of Marvin Nichols 1A.

Table 6.17 Summary/Comparison Matrix of the Potential Impacts of the Alternative Reservoir Sites

Reservoir Site	T&E Impacts	Archeological Resources Impacts	Bottomland Hardwood Impacts	Wetlands	Water Quality	Overall Ranking
WRIGHT PATMAN (259.5)	7	3	7	7	7	7
MARVIN NICHOLS 1A	6	4	6	6	4	6
WRIGHT PATMAN (237.5)	4	2	5	5	6	5
TALCO	5	4	4	4	5	4
PARKHOUSE I	3	3	3	3	3	3
PARKHOUSE II	2	3	2	2	2	2
JIM CHAPMAN (446.2)	1	1	1	1	1	1

Source: Environmental Evaluation Interim Report, Sulphur River Basin, Comparative Assessment, SRBA, June 2013.

6.10 Conclusion

It has been and continues to be the position of the NETRWPG that due to the significant negative impacts upon environmental factors, agricultural resources/rural areas, other natural resources, and third parties, Marvin Nichols I Reservoir should not be included as a water management strategy in any regional water plan or the State Water Plan. In referencing Marvin Nichols I, the NETRWP incorporates Marvin Nichols I, Marvin Nichols IA, and any major dam sites on the main stem of the Sulphur River.

Per the terms of agreement set forth from the October 5, 2015 mediation between Regions C and D and ratified by the NETRWPG at its October 21, 2015 meeting, the NETRWPG does not challenge Marvin Nichols Reservoir as a unique reservoir site for the purposes of this Plan. At the time of publication of this Regional Water Plan, no agreement has been made between Regions C and D for the purposes of the 2021 Region D Plan.

Considering the aforementioned information, it is further the position of the NETRWPG that the reallocation of Wright Patman Reservoir provides a viable potential water management strategy to assist in meeting the needs for Region C. Although the approach may be potentially more expensive to Region C (in terms of the unit costs of water) to meet that region's growing needs, the reallocation of Wright Patman may produce less of a potential impact to the agricultural and natural resources of Region D, while providing greater socioeconomic benefits to North East Texas.

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 8
Interregional Planning Council
Nominations**

Administrative Summary

TWDB sent out a letter on September 14, 2021, requesting each planning group submit nominations of at least one member to serve on the Interregional Planning Council for this cycle of planning. TWDB is also requesting one alternate be nominated for each member nominated. Nominations are due back to TWDB no later than February 28, 2022.

Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

September 14, 2021

Dear Regional Water Planning Group Chairs:

As you are likely aware, House Bill 807 from the 86th Texas Legislature directed the Texas Water Development Board (TWDB) to appoint an Interregional Planning Council (Council). The inaugural Council dissolved upon adoption of the 2022 State Water Plan on July 7, 2021. Therefore, the TWDB is now soliciting nominations for the next Council, whose appointment will continue until adoption of the 2027 State Water Plan.

The Council will consist of one member from each Regional Water Planning Group and its sole responsibility will be to provide a report to the TWDB which will be due in March 2024. As a reference, the Council's first report included recommendations on the topics of enhancing interregional coordination, planning water resources for the state, best practices for the future of planning, and addressing interregional conflict. The Council provided specific recommendations to the Legislature, the TWDB, regional water planning groups, and future Councils.

Each planning group should submit nominations consisting of at least one member to serve on the Council, and one alternate for each member nominated. **Nominations should be submitted no later than February 28, 2022.** The Board anticipates Council appointments to occur in April 2022. It is important to note that due funding and staffing limitations, TWDB anticipates providing the Council with a limited level of facilitation assistance for this planning cycle.

Nominations should be submitted to Sarah Backhouse, Regional Water Planning Manager. For each nominee, please include the interest category the individual represents, committee membership (if applicable), a brief background statement including time served on the planning group, contact information (email, phone number, and mailing address), and any other supporting information deemed relevant by the planning group.

Thank you for your participation in the regional water planning process. For additional information, contact Sarah Backhouse at Sarah.Backhouse@twdb.texas.gov or at (512) 936-2387.

Sincerely,

Jeff Walker
Executive Administrator

cc: Designated Political Subdivisions for RWPGs

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 9
Review of Region D Bylaws**

Administrative Summary

This item pertains to reviewing, discussing, and possibly taking action on proposed changes to the current bylaws for the Region D WPG. There is a copy of a red lined version of the current bylaws showing the proposed changes. Staff plans to go through the document and give explanation for each requested change so the board can discuss. While the board can take action in accepting these proposed changes if it chooses, there is no requirement for action at this meeting. After the board discussion of the proposed changes, staff could also make any discussed changes to the document and bring back a final copy for review and action at the next board meeting.

North East Texas Regional Water Planning Group Bylaws 04/20/98

Prepared for the
North East Texas Regional Water Planning Group

by the
Ark-Tex Council of Local Governments

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ARTICLE I. NAMES

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Section 1. Organization

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The official name of this organization shall be the "North East Texas Regional Water Planning Group" (hereinafter "NETxRWPG").

Section 2. Regional Water Planning Area

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The official name of the regional water planning area designated as Region Water Development Area, by the Texas Water Development Board (hereinafter TWDB) in accordance with 31 Texas Administrative Code (hereinafter TAC) Chapter 357 on February 19, 1998, shall be the North East Texas Regional Water Planning Area, (hereinafter NETxRWPA).

ARTICLE II. ESTABLISHMENT AND PURPOSE

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The NETxRWPG was established by appointment of an initial coordinating body by the TWDB on February 19, 1998, and any subsequent additional appointments by the initial coordinating body. The purpose of the NETxRWPG shall be to provide comprehensive regional water planning and to carry out the related responsibilities placed on regional water planning groups by state law, including Texas Water Code Chapter 16 and TWDB rules, including 31 TAC Chapters 355, 357 and 358, in and for the NETxRWPA.

ARTICLE III. PRINCIPAL ADMINISTRATIVE OFFICE

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The principal administrative office of the NETxRWPG shall be the principal business offices of ~~The Northeast Texas Municipal Water District~~the political subdivision that is serving as the NETxRWPG's administrator. The administrative officer of the NETxRWPG for purposes of the Texas Open Records Act shall be the ~~General Manager of the Northeast Texas Municipal Water District~~executive administrator of the political subdivision that is serving as the NETxRWPG's administrator. The Chair of the NETxRWPG shall insure that the mailing address and physical address of the principal office and administrative officer are provided to all members of the NETxRWPG and the Executive Administrator of the TWDB.

Page 1

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ARTICLE IV. RESPONSIBILITIES

The NETxRWPG shall have the responsibility for performing the functions defined in Texas Water Code, Chapter 16 and in 31 TAC Chapters 355, 357, and 358 related to regional water planning groups for the NETxRWPA. Foremost among those responsibilities shall be the development of a regional water plan for the NETxRWPA that identifies both short and long-term water supply needs and recommends water management strategies for addressing them.

ARTICLE V. VOTING MEMBERSHIP

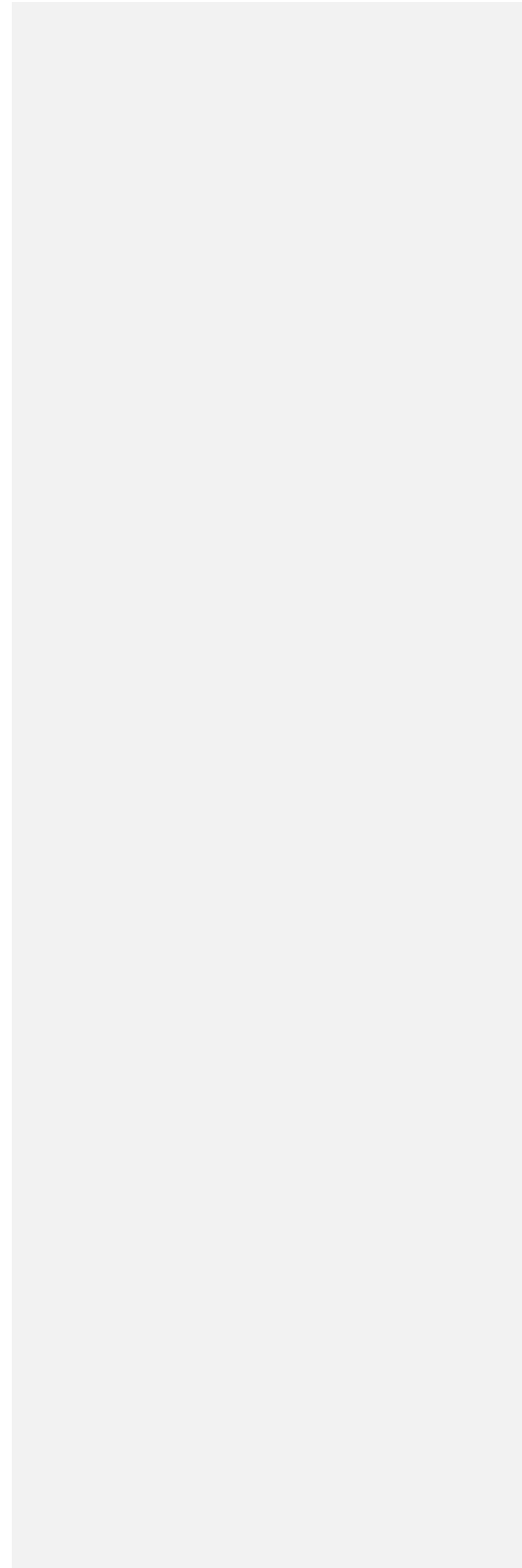
Section 1. Composition

The initial voting members of the NETxRWPG shall include the initial coordinating body appointed by the TWDB on February 19, 1998, plus the additional voting members appointed by the initial coordinating body to ensure adequate representation of the interests comprising the NETxRWPA stated in Texas Water Code 16.053(c), if present, and other interests determined by the NETxRWPG. Thereafter, the voting membership of the NETxRWPG shall include persons added or removed as provided under this Article and any 31 TAC §357.4(g)(4) member selected for voting membership under Article VI.

Section 2. Terms of Office

All terms of office shall be three years. All persons shall be eligible to serve a maximum of three consecutive terms as a voting member of the NETxRWPG, provided, however, if a member is voted on the board to complete an unexpired term of a resigning board member, that member will be entitled to serve the unexpired term plus a maximum of three consecutive terms. Outgoing members shall be given the opportunity to fully participate in the selection process for their successors and shall serve until their successors take office. The terms of all initial voting members shall expire on September 1, 2001. Upon the expiration of the initial terms, all voting members shall draw lots for additional terms of one, two or three years, such that one third of the voting members, terms will expire in one additional year, an additional third in two years and the final third in three additional years. If there is an odd number of voting members at the time that lots are drawn, one more than one third shall draw lots for the one year terms. No later than ninety calendar days prior to the end of the one year terms, the voting members shall initiate procedures to appoint successors for the voting members drawing one year terms, utilizing the process set forth under Section 4 of this Article. Outgoing voting members shall be given the opportunity to fully participate in the selection process for their successors and shall serve until their successors take office. At the conclusion of the two and three year terms described above, all subsequent terms of office for voting members shall be three years, the goal of staggering the terms of office having been accomplished. All persons shall be eligible to serve a maximum of two consecutive terms as a voting member of the NETxRWPG.

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Section 3. Conditions of Membership

In order to be eligible for voting membership on the NETxRWPG, a person must represent the interest for which a member is sought, be willing to participate in the regional water planning process, and abide by these bylaws.

Section 4. Selection of Members

No later than ninety calendar days prior to the expiration of a voting member's term, or within forty-five calendar days of the removal of a voting member, the NETxRWPG may post public notice in a newspaper of general circulation in each county located in whole or in part in the NETxRWPA or post public notice on the NETxRWPG's or political subdivision's Internet website soliciting nominations for a successor, identifying the particular interest for which nominations are sought, stating the conditions of membership, delineating the method for submitting nominations, and establishing a deadline for submission of nominations between thirty and forty-five calendar days from the date that public notice was posted. Members of the NETxRWPG may also submit nominations in the manner prescribed in the public notice.

The Executive Committee shall receive and process the nominations and, no sooner than ten calendar days after the deadline for submitting nominations, shall recommend a nominee to the voting membership as a whole, giving strong consideration to a consensus nominee from those individuals and entities that collectively represent that interest. The Executive Committee shall not be bound by the nominations received and may consider any person who meets the conditions of membership as a nominee. The voting membership as a whole shall not be bound by the recommendation of the Executive Committee and may consider any person who meets the conditions of membership as a nominee.

The voting members shall make a decision for a successor by an affirmative vote of at least two-thirds of the voting members. An affirmative vote of two-thirds of the total voting membership of the NETxRWPG shall be required to appoint a nominee as a new voting member. If voting ~~fails~~ to select a new voting member, the voting members shall consider other nominations until a new member can be selected by an affirmative vote of two-thirds of the voting membership.

In addition to selecting new voting members to fill vacancies caused by removal or the expiration of a term, the voting members may add members to ensure adequate representation of the interests comprising the NETxRWPA. If such a new member is added, the existing voting members shall determine by not less than agreement of two-thirds of the voting membership, the exact applicability of the membership term provisions and restrictions to the new member at the time of the

new member's selection.

In both the consideration of nominees and the selection of new voting members, the Executive Committee and other voting members shall strive to achieve geographic, ethnic, and gender diversity.

Outgoing voting members shall be given the opportunity to fully participate in the selection process for their successors and shall serve until their successors take office. However, no member shall participate in a vote in which he or she is a nominee.

~~Because initial members continue to serve for additional terms of either one, two or three years at the end of their initial terms as set forth under Section 2 of this Article, this Section 4 shall not apply to the regular expiration of the initial terms of the initial members; however, this section shall apply to the selection of a successor for a removed voting member during the initial terms.~~

Section 5. Attendance

All members shall make a good faith effort to attend all NETxRWPG meetings and hearings. Records of attendance shall be kept by the Secretary at all NETxRWPG meetings and hearings and presented as part of the minutes. Voting members of the NETxRWPG that have recorded absences from three consecutive meetings and/or hearings, or at least one-half of the sum of all meetings and hearings in the preceding twelve months, shall be considered to have engaged in excessive absenteeism and shall be subject to removal from membership under Section 7 of this Article. The Chair shall excuse an absence if it is made known to the Chair prior to the beginning of the meeting or hearing that the absence is related to one of the following with supporting documentation made available to the Chair: personal illness, family or urgent business emergency, or jury or military duty. An excused absence will not be recorded as an absence. Representation by a designated alternate does not excuse a member's absence.

Section 6. Code of Conduct

Members and designated alternates of the NETxRWPG shall ethically conduct the business of the NETxRWPG and shall avoid any form or appearance of a conflict of interest, real or apparent, by observing the following:

- (a) No member or designated alternate of the NETxRWPG shall:
 - (1) Solicit or accept gratuities, favors, or anything of monetary value from suppliers or potential suppliers of services, materials, or equipment, including subcontractors under recipient contracts; or

(2) Participate in the selection, award, or administration of a procurement where the member or designated alternate has a financial or other substantive interest in the organization being considered for award. Such conflict may be due to any of the following having a financial or familial relationship with the organization:

- i) the member or designated alternate;
- ii) the members or designated alternates family;
- iii) the members or designated alternate business partner(s); or
- iv) a person or organization that employs, or is about to employ, any of the persons listed in (i)-(iii), above.

(3) Participate in any deliberation, decision, or vote that would constitute a conflict of interest under federal, state, or local law.

(b) Potential conflicts of interest shall be clearly stated by the voting member or designated alternate prior to any deliberation or action on an agenda item with which the voting member or designated alternate may be in conflict. Where the potential conflict is restricted to a divisible portion of an agenda item, the Chair may divide the agenda item into parts, at the Chair discretion, for deliberation and voting purposes. An abstention from participation in deliberations, decisions, or voting and the reasons therefor shall be noted in the minutes.

Section 7. Removal of Voting Members

(a) Grounds for Removal of Voting Members. The following shall constitute grounds for removal of a voting member:

- (1) engaging in excessive absenteeism as defined under Section 5 of this Article;
- (2) death;
- (3) resignation;
- (4) failure to abide by the code of conduct provisions set forth under Section 6 of this Article;
- (5) appointment of a successor by the voting members upon expiration of the member term;
- (6) change in status so that the member no longer represents the interest he or she was selected to represent;
- (7) falsifying documents;
- (8) any other serious violation of these bylaws as may be determined by the voting members; or
- (9) the voting members designated alternate engages in any acts described in subdivisions (4), (7), or (8) of this subsection.

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NETRWPG Minutes for June 17, 1998

Page Three

The selection continued and voting was made on the two teams with the most votes.

Bucher, Willis & Ratliff received 12 votes, and Alan Plummer received 9 votes during this selection process. Bucher, Willis & Ratliff received a majority of the Group.

Motion was made by Ruth Culver, second by Terry Winn to select Bucher, Willis & Ratliff to perform the scope of work for Region D. Motion carried unanimously.

Mr. Ray Flemons, Sr. Vice President made a brief statement and stated his appreciation for being selected to perform the scope of work.

Pursuant to Agenda Item No. 3, motion was made to amend Article V, Section 1. to provide that there will be no more than twenty-three (23) voting members on the full Group. By consensus motion, it was recognized that Ralph Rogers had resigned and that his resignation has been accepted. Motion was made to amend Article VI, Section 1.(b) to provide that within 45 days of adoption of the Bylaws, the NETRWPG shall post notice to solicit nominations for persons to serve as 31 TAC Section 357.4(g)(4) members. All motions made pursuant to Agenda Item No. 3 passed unanimously.

Motion to appoint Mendy Rabicoff as Liaison to Region I was made by David Parsons, second by Terry Winn. Motion carried unanimously.

Motion to appoint Ed Withers as Liaison to Region C was made by Mike Huddleston, second by Bill Rice. Motion carried unanimously.

Motion to appoint the following non-voting members who have headquarters outside Region D but who have at least 1,000 acre feet of water rights inside Region D:

Sam Collins — Sabine River Authority
Robert Mansell — North Texas Municipal Water District
W. David Ryburn — City of Irving
Larry N. Patterson — City of Dallas
Winston Holley - SWEPCO

Motion was made by Sue Ann Harting, second by John Bradley. Motion carried unanimously.

Motion was made by Gary Jackson, second by Vernon Rowe, to appoint James A. Withaeger, as a non-voting member representing U. S. Army Corps of Engineers, a Federal Agency.

(b) Process for Removing Voting Members. Voting members may be removed at any time for any of the grounds for removal of voting members set forth in subsection (a) of this section. Any member with knowledge or suspicion that a voting member or designated alternate has engaged in acts or that events have occurred constituting a ground for removal under subsection (a) of this section shall report such information or suspicion to the Chair. The Chair, upon discovering or receiving such information, shall make a written request to that member for an explanation as to why he or she should not be removed from voting membership. The member shall make written response to the Chair within fifteen calendar days from the date of receipt of the Chair request. Within five calendar days of receipt of the members response, the Chair shall forward copies of the response to the voting members. If the Chair continues to suspect that a ground for removal may exist, if the member fails to make a timely response to the Chair request, or if a voting member requests its inclusion on the agenda after reviewing the written response from the accused member, the Chair shall place an item on the next subsequent meeting agenda calling for the removal of the member. At the meeting, the member subject to the possible removal action may present evidence of why he or she should not be removed. The voting members may remove the member by not less than agreement of two-thirds of the voting membership. The member subject to the removal action shall not participate in any way in the removal decision, nor shall his or her membership count as part of the total voting membership for purposes of calculating a two-thirds vote.

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ARTICLE VI. NON-VOTING MEMBERSHIP

Section 1. Mandatory Members

(a) The voting members of the NETxRWPG shall add the non-voting members set forth in 31 TAC §357.4(g)(1)-(g)(3) and accept the designees appointed by the entities set forth therein. Such designees shall have no terms of office and shall serve until replaced by the designating entity. However, if the voting members decide by not less than agreement of two-thirds of the voting membership, that a particular designee is hindering the regional water planning efforts of the NETxRWPG, the Chair shall make a written request within ten calendar days to the entity requesting the designation of another person to serve as the entity's designee.

(b) The voting members of the NETxRWPG shall add at least one non-voting member as set forth in 31 TAC §357.4(g)(4). Within thirty calendar days of adoption of these bylaws, or within forty-five calendar days of the removal of a 31 TAC §357.4(g)(4) member, the NETxRWPG ~~shall~~ may post public notice in a newspaper of general circulation in each county located in whole or in part in the

NETxRWPA or post public notice on the NETxRWPG's or political subdivision's Internet website, soliciting nominations for persons to serve as a 31 TAC §357.4(g)(4) member, stating the conditions of membership, delineating the method for submitting nominations, and establishing a deadline for submission of nominations ~~between thirty and forty-five calendar days from the date that public notice was posted, of no later than twenty-one calendar days from the date notice was posted.~~ Members of the NETxRWPG may also submit nominations in the manner prescribed in the public notice.

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The Executive Committee shall receive and process the nominations and, after the deadline for submitting nominations, shall recommend a nominee to the voting membership as a whole, giving strong consideration to a consensus nominee from those individuals and entities that collectively represent the interest as described in 31 TAC §357.4(g)(4). The Executive Committee shall not be bound by the nominations received and may consider any person who meets the conditions of membership as a nominee. The voting membership as a whole shall not be bound by the recommendation of the Executive Committee and may consider any person who meets the conditions of membership as a nominee.

The voting members shall make a decision for a new member or successor by an affirmative vote of at least two-thirds of the voting members. An affirmative vote of two-thirds of the total voting membership of the NETxRWPG shall be required to appoint a nominee as a non-voting 31 TAC §357.4(g)(4) member. If voting fails to select a member, the voting members shall consider other nominations until a 31 TAC §357.4(g)(4) member can be selected by an affirmative vote of two-thirds of the voting membership.

Once selected, a 31 TAC §357.4(g)(4) non-voting member shall have no term of office and shall serve until removed by the voting members by not less than an affirmative vote of two-thirds of the voting membership.

(c) The voting members may at any time, including the time of initial selection of a 31 TAC §357.4(g)(4) member, convert the membership of a 31 TAC §357.4(g)(4) non-voting member into a voting membership by a two-thirds vote of the voting membership. If selected to be a voting member, a 31 TAC §357.4(g)(4) member shall have the rights, duties, terms, conditions, and other privileges and obligations of regular voting members. The voting members, excluding the 31 TAC §357.4(g)(4) member subject to the possible membership conversion, shall determine the exact applicability of the membership term provisions and restrictions to the 31 TAC §357.4(g)(4) member at the time of such conversion by not less than agreement of two-thirds of the voting membership.

(d) The voting members, excluding the 31 TAC §357.4(g)(4) member subject to the possible membership conversion, may at any time convert the membership of a

31 TAC §357.4(g)(4) voting member into a non-voting membership, by not less than an affirmative vote of two-thirds of the voting membership, not including the voting membership of the 31 TAC §357.4(g)(4) member subject to the possible membership conversion.

Section 2. Discretionary Members

The voting members of the NETxRWPG may add or remove as a non-voting member an entity set forth in 31 TAC §357.4(h) by two-thirds vote of the voting membership. If an entity is added, the Chair shall make a written request within ten calendar days to the entity requesting the designation of a person to serve as the entity's designee. Such designees shall have no terms of office and shall serve until replaced by the designating entity or until the entity is removed as a nonvoting member. However, if the voting members determine by a two-thirds vote of the voting membership that a particular designee is hindering the regional water planning efforts of the NETxRWPG and that the entity should remain as a nonvoting member, the Chair shall make a written request within ten calendar days to the entity requesting the designation of another person to serve as the entity's designee.

Section 3. Code of Conduct

All non-voting members shall comply with the code of conduct provisions under Section 6 (Conflict of Interests) of Article V of these bylaws.

ARTICLE VII. DESIGNATED ALTERNATES

Each member shall designate an alternate to represent him/her when he/she is unable to attend a meeting or hearing. Each member must notify the Chair in writing of the name and address of the members designated alternate at least forty-eight hours prior to the first meeting or hearing at which the designated alternate will appear on behalf of the member. If the member fails to provide such notice, the Chair may forbid the participation of the designated alternate at the meeting or hearing. ~~The Chair shall not recognize the designation of more than one alternate per member at any given time. The Chair shall not recognize more than two alternate designations of any kind per member per calendar year unless the NETxRWPG expressly decides to waive this provision.~~

The designated alternate shall enjoy the same voting privileges, or lack thereof, and shall be bound by the same duties, terms, and conditions as the member they represent, except as otherwise provided in these bylaws. However, a designated alternate for a voting member who serves as an officer shall not be allowed to

serve in the capacity as an officer in the member's absence.

~~The Chair shall provide each member with a current list of all members and their designated alternates.~~

ARTICLE VIII. OFFICERS

Section 1. Officers, Restrictions, and Terms of Office

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Voting members of the ~~Next-NETx~~ RWPG shall select from the voting membership a Chair, Vice Chair, and Secretary/Treasurer to serve as officers. Each officer shall serve a term of one calendar year. However, the terms of the initial officers selected under Section 2 of this Article shall expire when the regular officers take office as provided under this Article. Except as provided under Section 4 of this Article, an officer shall serve until his or her successor takes office. Elections shall be held annually, with no restrictions on the number of consecutive terms an individual may serve as an officer other than those that apply because of his or her status as a voting member under these bylaws.

Section 2. Selection

(a) Initial Officers. Within twenty eight days after the adoption of these bylaws, the voting members shall select initial officers. Nominations shall be made from the floor by voting members. The voting members shall select officers from among the nominees by not less than agreement of two-thirds of the voting members present.

(b) Regular Officers. Regular officers shall be selected at the first meeting of each calendar year after the calendar year in which these bylaws were adopted. Written notice of the meeting to select officers shall be mailed or emailed to all members of the NETxRWPG by the current Secretary thirty calendar days prior to the meeting. Nominations shall be made from the floor by voting members. The voting members shall select officers from among the nominees by not less than agreement of two-thirds of the voting members present.

Section 3. Removal of Officers

Any officer may be removed from office for any of the grounds for removal of voting members set forth under Article V of these bylaws, or for repeated failure to carry out the duties of the office, by but not less than agreement of two-thirds of the voting members present. Removal of an officer shall be set as an agenda item

at the next scheduled meeting upon written request signed by five voting members to the Chair or Secretary. The Chair or Secretary receiving the request shall notify the officer in writing that he or she shall be subject to a removal action at the next scheduled meeting. At the meeting, the officer subject to the possible removal action may present evidence of why he or she should not be removed. If the Chair is the subject of the possible removal action, the Vice-Chair shall preside over the meeting during the agenda item concerning the Chair's removal. The officer subject to the removal action shall not participate in any way in the removal decision, nor shall his or her membership count as part of the total membership for purposes of calculating a two-thirds vote. The notice of the meeting shall be posted in accordance with the Open Meetings Act and shall state that the issue of possibly removing the officer will be on the agenda. Any vacancy caused by the removal shall be filled as provided under Section 4 of this Article.

Section 4. Vacancies of Officers

Whenever an officer vacancy exists because of death, resignation, or removal, the vacancy shall be filled within thirty days of the event causing the vacancy. Nominations shall be made from the floor by voting members. The voting members shall select a replacement officer from among the nominees by not less than agreement of two-thirds of the voting members present. The next highest ranking officer shall serve in the vacant position until a successor takes office, unless the office of the Secretary becomes vacant, in which case the Chair shall appoint a willing voting member to serve as Secretary until the successor to the Secretary takes office. The person selected to fill a vacancy for an officer shall serve for the unexpired term of his or her predecessor in office.

Section 5. Duties of Each Officer

(a) Chair. The Chair shall be the executive officer of the NETxRWPG. The Chair will preside at all meetings of the NETxRWPG and perform all duties provided by these bylaws. If the Chair is unable to carry out his/her duties, the Vice Chair shall assume the duties of the Chair.

(b) Vice Chair. The Vice Chair shall assist the Chair in the discharge of his/her duties and, in the absence of the Chair, shall assume the Chair's full responsibilities and duties. In the event the Chair is unable to carry out his/her duties, the Vice Chair shall serve as Chair until the NETxRWPG elects a new Chair under Section 4 of this Article. The Vice-Chair shall perform other duties as assigned by the Chair, or these bylaws.

(c) Secretary/Treasurer. The Secretary/Treasurer shall maintain the minutes and take attendance of the NETxRWPG meetings. The minutes and attendance shall

be kept as part of the NETxRWPG official records. The Secretary/Treasurer shall insure that all notices are properly posted as provided in the bylaws, as required by law, and as required by the Texas Open Meetings Act. The Secretary/Treasurer shall maintain a record of revenues and expenses sufficient to meet state auditor requirements, under the Uniform Grant Administration Management Standards (UGAMS) and perform other duties as assigned by the Chair or these bylaws. If the both the Chair and Vice Chair are unable to carry out the duties of the Chair, the Secretary/Treasurer shall assume the duties of the Chair.

Section 6. Executive Committee

The Executive Committee shall be composed of five NETxRWPG members, including the Chair, Vice Chair, Secretary/Treasurer, and two members-at-large. The two members-at-large shall be selected annually in the same manner and with the same terms as set forth for the selection of officers under this Article. Members-at-large shall be removed and their vacancies filled in the manner prescribed for officers under this Article.

The Executive Committee shall be responsible for carrying out the duties imposed on it in these bylaws. The voting members of the NETxRWPG may delegate any administrative decisions to the Executive Committee unless provided otherwise in these bylaws.

All meetings of the Executive Committee shall comply with the provisions related to meetings generally as set forth in Article IX of these bylaws.

Section 7. Designated Alternates

A designated alternate of a member serving as an officer shall not serve in the member's capacity as an officer in lieu of the member. When an officer is absent or otherwise unable to serve, the next highest ranking officer shall serve for the officer. If no lower ranking officer exists or can serve, then a member designated by the Chair or acting Chair shall serve for the officer.

ARTICLE IX. MEETINGS

Section 1. Open Meetings and Notice

All meetings of the NETxRWPG, its committees and/or sub-groups, shall be posted and open to the public in the manner of a governmental body under the Texas Open Meetings Act and as set forth in TWDB rules. All actions of the NETxRWPG shall be deliberated and undertaken in open meeting, unless otherwise authorized by the Texas Open Meetings Act. The time and place of

meetings shall be set to facilitate, to the greatest extent possible, the participation of the public in the regional water planning process. Copies of all materials presented or discussed shall be made available for public inspection prior to and following any meeting of the NETxRWPG.

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Section 2. Regular Meetings

The NETxRWPG shall meet on a regular basis. At the first meeting after the adoption of these bylaws and the first meeting of each calendar year thereafter, the NETxRWPG shall establish and adopt a meeting schedule for the ensuing year. The Secretary shall insure that an advance notice and an agenda for regular meetings will be provided to the full membership of the NETxRWPG at least ~~seventy-two (72) hours~~ seven days in advance by first class U.S. Mail, facsimile, or electronic mail. Supporting information and member-requested materials shall be distributed to the full membership ~~with the notice and agenda or at the meeting, as deemed appropriate by the Chair~~ at least three days prior to each meeting.

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Section 3. Called (Special) Meetings

The Chair or a majority of the voting members of the NETxRWPG may call special meetings of the NETxRWPG. The Secretary shall insure that advance notice and an agenda for the called meeting is provided to the full membership of the NETxRWPG at least ~~seven days~~ ~~seventy-two (72) hours~~ in advance by first class U.S. Mail, facsimile, or electronic mail. Supporting materials for the meeting may be forwarded to each member ~~at least three days~~ prior to each meeting, as deemed appropriate by the Chair.

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Section 4. Agenda

The Secretary of the NETxRWPG shall insure that an agenda is prepared and distributed for all meetings, in accordance with Sections 2 and 3 of this Article. Items shall be placed on the agenda by the request of the Chair or by the request of at least three voting members of the NETxRWPG. Consideration for approval of the previous meetings minutes, as applicable, shall always be among the first items on the agenda. Copies of the agenda and all supporting information shall be made available for public inspection prior to and following any meeting of the NETxRWPG.

Section 5. Quorum

A quorum of the NETxRWPG shall be a simple majority of the voting members or their designated alternates excluding vacancies. At minimum, a quorum shall be necessary to conduct any business of the NETxRWPG. No actions requiring a

two-thirds vote of the voting membership shall be taken during a regular business session, unless at least three ~~forths~~fourths of the voting membership is present.

Section 6. Applicability of Robert's Rules of Order

Except as otherwise provided in these bylaws, meetings of the NETxRWPG shall be conducted under the provisions of the most current edition of *Robert's Rules of Order*. However, failure to follow such rules shall not constitute grounds for appeal of an action or a decision of the NETxRWPG.

Section 7. Public Hearings/Meetings Required By Law

The NETxRWPG shall post notice and conduct public hearings and public meetings that are specifically required by statute and/or TWDB rule, including those set forth for preplanning, draft regional water plan presentation, adoption of amendments to the regional water plan, and final regional water plan adoption, in accordance with the requirements of the relevant state law and/or TWDB rules. Notification requirements may be different than those specified in Section 1 of this Article and are specifically delineated in Texas Water Code 16.053 and/or 31 TAC §357.12.

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Section 8. Minutes

(a) The Secretary shall insure that minutes of all meetings of the NETxRWPG are prepared. The minutes shall:

- (1) state the subject of each deliberation;
- (2) indicate each vote, order, decision, or other action taken;
- (3) indicate those members in attendance, noting the presence of a quorum, and noting the presence of those members of the public who participate in the course of the meeting;
- (4) represent an accurate summary of the meeting record; and state any other information required by these bylaws to be included in the minutes.

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(b) The Secretary shall insure that true copies of the minutes are provided to the full membership as soon as possible following the meeting, but no later than prior to the next regular meeting of the NETxRWPG.

ARTICLE X. MAKING DECISIONS

Section 1. Applicability; No Written Proxies

(a) Unless the method for making a particular decision is set forth in these bylaws, the NETxRWPG, its committees, and subgroups shall make all decisions utilizing the process set forth in Section 2 of this Article.

(b) Written proxies shall not be allowed in any decision-making by the NETxRWPG, its committees, or its subgroups. However, designated alternates shall be allowed to participate in decision making as set forth in these bylaws. Because it is important in achieving agreement for all members to participate actively, keep up-to-date on the progress of the group, and develop a common base of information, members shall in good faith attempt to minimize the number of times they are absent from meetings or are represented by their designated alternates.

Section 2. Decision-Making Process

(a) The NETxRWPG shall make decisions using a voting process based upon a show of hands. Secret written ballots shall not be allowed during an open session.

(b) Failure to Reach Agreement. If after good faith negotiations it appears likely to the Chair that the voting members will be unable to reach full agreement, the Chair shall entertain the following:

a motion and a second to put the issue to a vote to be conclusively decided by an affirmative vote of not less than fifty-one percent of the voting members present.

Section 3. Methods to Resolve Disputes

(a) The Northeast Texas RWPG shall use methods to resolve disputes between regional water planning group members on matters coming before the regional water planning group. The method that will first be used is resolution of the dispute by consensus. If the consensus method fails to resolve the dispute, then the method used to resolve the dispute shall be by vote of the voting members of the Northeast Texas RWPG. Resolution by the voting method shall be by majority vote unless otherwise provided by an applicable section of the Bylaws or applicable law. This section should be construed as satisfying or exceeding any requirement described in 31 TAC Section §357.4(K)(6).

Section 4. Final Adoption of Regional Water Plan; Amendments

The voting members of the NETxRWPG shall finally adopt the regional water plan for the NETxRWPA, and any amendments thereto by not less than agreement of two-thirds of the voting membership.

ARTICLE XI. BOOKS AND RECORDS

Section 1. Required Documents and Retainment

Records of the NETxRWPG, including: a current membership list with addresses, affiliations, and phone numbers, if not unlisted; the current roster of officers; a copy of the written record of designation of the political subdivision(s) as representative(s) of the NETxRWPG; minutes; agendas; notices; contracts, subcontracts, annual financial statements, and any and all financial records and supporting information; bylaws; records of public hearing; correspondence; memoranda; phone logs; committee or subgroup recommendations or findings; draft and final plans; studies; data of any sort; computer records or models; executive summaries; other work products; and any other pertinent information of a public nature shall be kept at the principal office of the NETxRWPG for a period of at least five years.

Section 2. Inspection and Copying

Records of the NETxRWPG shall be available for inspection and copying at the principal place of business of the representative political subdivision (Administrative Entity) during normal business hours. Procedures and fees for copying and inspection shall be the same as those used by the political subdivision housing the principal office of the NETxRWPG for inspection and copying of its own public records.

Section 3. Availability of Reports

All reports, planning documents, and work products resulting from projects funded by the TWDB shall be made available to the TWDB, the Texas Parks and Wildlife Department, and the Texas Natural Resource Conservation Commission or their successor agencies. At least one copy of the approved regional water plan

shall be placed in the county clerk's office for each county and in at least one public library of each county having land within the NETxRWPA, in accordance with state law.

ARTICLE XII. COMMITTEES

Section 1. Establishment

The NETxRWPG may by motion establish committees and subgroups to assist and advise the NETxRWPG in the development of the regional water management plan. The committee or subgroup may be formed to address specific issues assigned by the NETxRWPG and may have a specified term of membership.

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Section 2. Membership

Membership in the committees and subgroups shall generally follow the requirements and procedures of Article V of these bylaws; membership of the committees and subgroups should be inclusive, rather than exclusive in nature; the interests identified in the initial coordinating body will be invited to participate, as well as other interests that have been identified. Appointment to committees or subgroups shall be made by not less than agreement of two-thirds of the voting membership. The terms of office for all members of committees and subgroups shall be either upon the expiration of the term, if any, specified by the NETxRWPG in the establishing motion for the committee or subgroup, or upon the expiration of the person's membership in the NETxRWPG.

Section 3. Officers

The Chair, Vice-chair, and Secretary of a committee or subgroup established by the NETxRWPG shall be selected from the duly-elected members of the respective committee or subgroup. The Chair, Vice Chair, and Secretary of the committee or subgroup established by the NETxRWPG shall be elected to their respective offices by a majority affirmative vote of the members of the committee or subgroup. Additional committee or subgroup officers with associated responsibilities may be created as necessary by a majority affirmative vote of the members of the committee or subgroup. The additional officers shall be elected by a majority affirmative vote of the members of the committee or subgroup.

Section 4. Meetings

Requirements and procedures for committee or subgroup meetings shall follow those established in Article IX of these bylaws, including requirements for notice. Committees or subgroups may adopt their own rules of procedure, if authorized by

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the NETxRWPG and the rules are not in conflict with state law, TWDB rules, or these bylaws.

Section 5. Books And Records

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Requirements and procedures for committee or subgroup books and records shall follow those established for the NETxRWPG in Article XI of these bylaws.

Section 6. Code of Conduct

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Members of a committee or subgroup are subject to the requirements of Article V, Section 6 of these bylaws.

ARTICLE XIII. COMPENSATION

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Members of the NETxRWPG are not to be compensated for their expenses by the State of Texas. All travel expenses may be documented by the members and submitted to the political subdivision designated by the NETxRWPG to apply to TWDB for funding. The political subdivision contracting with the TWDB for the NETxRWPG shall compile the travel information from the members, which will be counted as an in-kind expense at the state rate that is in effect at the time the travel occurred.

ARTICLE XIV. COST ALLOCATION

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The voting members of the NETxRWPG shall develop and approve an equitable method or formula for the allocation of costs associated with the local match for state funding.

ARTICLE XV. CONTRACTUAL SERVICES

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The voting members of the NETxRWPG shall make all decisions related to final approval of persons or entities selected by an eligible applicant to provide contractual services for the NETxRWPG, including all services related to preparation, development, or revisions of the regional water plan for the NETxRWPA. However, the voting members may delegate to the Executive Committee the authority to make administrative decisions concerning amendments to TWDB Research and Planning Fund grant contracts for services related to regional water planning, except those decisions concerning amendments related to scopes of work and budgets.

ARTICLE XVI. ADOPTING AND AMENDING THE BYLAWS

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These bylaws shall have full force and effect upon approval and adoption by the voting members of the NETxRWPG, acting on behalf of the interests comprising the NETxRWPA, and upon submission to the TWDB in compliance with 31 TAC §357.4. The voting members shall adopt these bylaws and any amendments thereto by not less than agreement of two-thirds of the voting membership.

ARTICLE XVII. RESOLUTION ADOPTING BYLAWS


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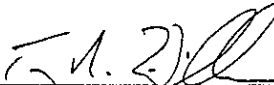
WHEREAS, no bylaws have been adopted governing the conduct of the internal affairs of the NETxRWPG; and

WHEREAS, the set of bylaws presented to this meeting are suitable for the purpose and their adoption is in the best interests of the NETxRWPG; it is, therefore,

RESOLVED, that the members of the NETxRWPG this 20th day of April 1998, approve and adopt the bylaws presented to this meeting of members as the bylaws of the NETxRWPG; and it is

FURTHER RESOLVED, that the bylaws be authenticated as such by the Secretary of the NETxRWPG and placed in its minute book, and that a full and true copy of the bylaws, certified by the Secretary, be kept at the principal office of the NETxRWPG for inspection by members or the public at all reasonable times during business hours.

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Chairman

**MEETING OF THE
North East Texas Regional Water Planning Group
WEDNESDAY, November 10, 2021**

**Agenda Item 10
Consider adding a new Non-Voting
Member**

Administrative Summary

This item pertains to the discussion at the August 4, 2021 meeting when there was discussion of the process to add a new Non-Voting Member. Mr. Thompson asked staff to research the process and report back to the members at the next meeting. 31 TAC 357.11(g) states that the RWPG at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning. The bylaws in Article VI Section 2 allow for the voting members to add a non-voting member by two-thirds vote of the voting membership.

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 31	NATURAL RESOURCES AND CONSERVATION
PART 10	TEXAS WATER DEVELOPMENT BOARD
CHAPTER 357	REGIONAL WATER PLANNING
SUBCHAPTER A	GENERAL INFORMATION
RULE §357.11	Designations

(a) The Board shall review and update the designations of RWPAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA. The Board shall provide 30 days notice of its intent to amend the designations of RWPAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs shall be developed, taking into consideration factors such as:

- (1) River basin and aquifer delineations;
- (2) Water utility development patterns;
- (3) Socioeconomic characteristics;
- (4) Existing RWPAs;
- (5) Political Subdivision boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RWPG shall at a minimum address the following elements:

- (1) definition of a quorum necessary to conduct business;
- (2) method to be used to approve items of business including adoption of RWPs or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and

(6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

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

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 500 employees or less than \$10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

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

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

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

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

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

- (3) Member designated by each adjacent RWPG to serve as a liaison;
- (4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA;
- (5) Staff member of the Texas Department of Agriculture designated by its commissioner; and
- (6) Staff member of the State Soil and Water Conservation Board designated by its executive director.
- (f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.
- (g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.
- (h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.
- (i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an RWP only upon approval of the RWPG.
- (j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures and water conservation practices.
- (k) The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following provisions:
 - (1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.
 - (2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.
 - (3) Interregional Planning Council members will serve until adoption of the State Water Plan.
 - (4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.
 - (5) For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by a date established by the EA, which will be no later than adoption of the 2022 State Water Plan. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

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

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