

# Water Supply Planning Consistency Reviews for TWDB Financial Assistance Projects

## What is a consistency review?

To receive funding from the TWDB, projects must be consistent<sup>1</sup> with the most recent regional and state water plans<sup>2</sup>. In addition, for the State Water Implementation Fund for Texas (SWIFT) program, and for reporting purposes in general, TWDB staff must assess whether a proposed project is specifically included as a recommended water management strategy in the most recently adopted regional and state water plans.

## When is a consistency review completed?

Consistency reviews are completed by TWDB staff after a financial assistance application has been received. TWDB staff are responsible for evaluating whether the proposed project is consistent with or included in the applicable regional and state water plans.

## What makes a project consistent or not consistent with the regional and state water plan?

Consistency is evaluated on a case-by-case basis and is determined based on the most recently adopted regional water plan and state water plan.

In general, the water supply source is the primary factor for consistency determinations. Consistency is based on whether the sources identified on the TWDB WRD-253a or WRD-253d form provided by the applicant are consistent with the existing and/or recommended new sources for the entity associated with the project in the regional and state water plans.

Some guiding principles include:

- A project that is the same as a project recommended in the regional water plan and state water plan is consistent.

- A project that expands the use of an existing supply source is generally consistent.
- A project that develops supplies in a source which is a recommended strategy for the entity in the regional and state water plan is consistent.
- For SWIFT loans, the proposed project must be in the currently adopted state water plan as a recommended WMS with an associated capital cost to be eligible for funding.

Examples of projects that would not be considered consistent with regional and state water plans include, but are not limited to the following:

- A new water treatment plant using contracted surface water to replace a previous groundwater supply source if it is not recommended as a water management strategy in the approved plans.
- A new groundwater well if the existing source was surface water, and there is no water management strategy for a new groundwater supply recommended in the approved plans.
- A proposed project to meet a need that was not met by the current approved state water plan.

## If a project is not consistent, how can an entity pursue funding?

Projects determined to not be consistent with the regional and state water plans will not be eligible for TWDB funding, unless the applicant pursues a regional water plan amendment, or the TWDB Board grants a consistency waiver. The TWDB does not provide guidance on which option an applicant should pursue. The applicant must coordinate with

<sup>1</sup> State water plan consistency requirements do not apply to Flood Infrastructure Fund projects. Consistency requirements

apply to certain Clean Water State Revolving Fund projects, including reuse and conservation.

<sup>2</sup> Required by Texas Water Code Sec. 16.053(j)

JANUARY 2023

their regional water planning group (RWPG) to determine which option to proceed with<sup>3</sup>.

### **Regional Water Plan Consistency Waiver Process**

To pursue a consistency waiver, the following steps should be taken by the entity sponsoring the project and pursuing funding with the TWDB:

1. The project sponsor should determine whether the project is eligible for a waiver under Texas Water Code §16.053(j) based on the factors in 31 Texas Administrative Code (TAC) §357.60(b). If the project sponsor finds the project to be eligible for a waiver, the project sponsor should ask the RWPG to support requesting a consistency waiver from the TWDB Board. The project sponsor should prepare an agenda item for action at the next RWPG meeting. The project sponsor should be prepared to explain why the consistency waiver is requested and should provide the technical material that will be submitted to the TWDB.
2. In its consideration of a consistency waiver, the RWPG should consider, at a minimum, the availability of water at the proposed project location.
3. After taking action on the waiver request, the RWPG should submit a letter to the TWDB Executive Administrator and copy TWDB staff stating the outcome of their consideration, including whether the RWPG supports the waiver request and a general opinion regarding the availability of water.
4. If the RWPG supports a waiver request, the project sponsor should submit a consistency waiver request to the TWDB Executive Administrator and copy the appropriate TWDB staff. The project sponsor's waiver request should address the language in 31 Texas Administrative Code §357.60(b)(5)<sup>4</sup> and the governing body of the project sponsor should request the waiver by resolution and/or other statement.

5. In addition to the official resolution or statement, the consistency waiver request should also include reference to the project information form and date the project information form was submitted to the TWDB, or reference to the loan application and date the application was submitted to the TWDB, and include the following technical information on the project:
  - A statement of the need for the project, including the water source, the expected supply volumes to be generated by the project, and whether there are sufficient available supplies for the project to be developed.
  - A summary of the extent/service area of the project. If the entity's service area falls within more than one regional water planning area, the consistency waiver request should state whether the service area affected by this project is limited to only one planning area and only impacts one regional water plan.
  - A statement regarding why this project was not reflected in the most currently adopted regional water plan.
  - A summary of the current status of the loan, including timelines for closing on the loan, beginning construction, TCEQ enforcement actions, etc.
  - A summary of the entity's interactions with the RWPG, including when the waiver request was presented to the RWPG, the action taken by the RWPG, and any interactions with the RWPG's technical consultants on how the project would impact the currently adopted regional water plan.

A consistency waiver request to the Board will appear within the same agenda item for the loan commitment as a contingent requirement for the loan.

<sup>3</sup> Information on the regional water plan amendment process: <https://www.twdb.texas.gov/waterplanning/rwp/planningdocs/resourcedocs/AmendingApprovedRWP.pdf>

<sup>4</sup> [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=31&pt=10&ch=357&rl=60](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=10&ch=357&rl=60)