

## Chapter 8

# Ecologically Unique Stream Segments, Unique Reservoir Sites, and Legislative Recommendations

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This chapter of the 2011 Plan addresses unique stream segment designation, unique reservoir site designation, and water planning recommendations to the Texas Legislature. Relevant information related to these issues was considered by the ETRWPG and the group voted on each issue. Following is a discussion of each issue.

### 8.1 Unique Stream Segments

Designation of a river or stream segment as ecologically unique is defined by §16.051(f) of the Texas Water Code to mean “that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream designated.” Based on this legislation, the ETRWPG is obligated to consider potential river or stream segments as being of unique ecological value based upon the following criteria:

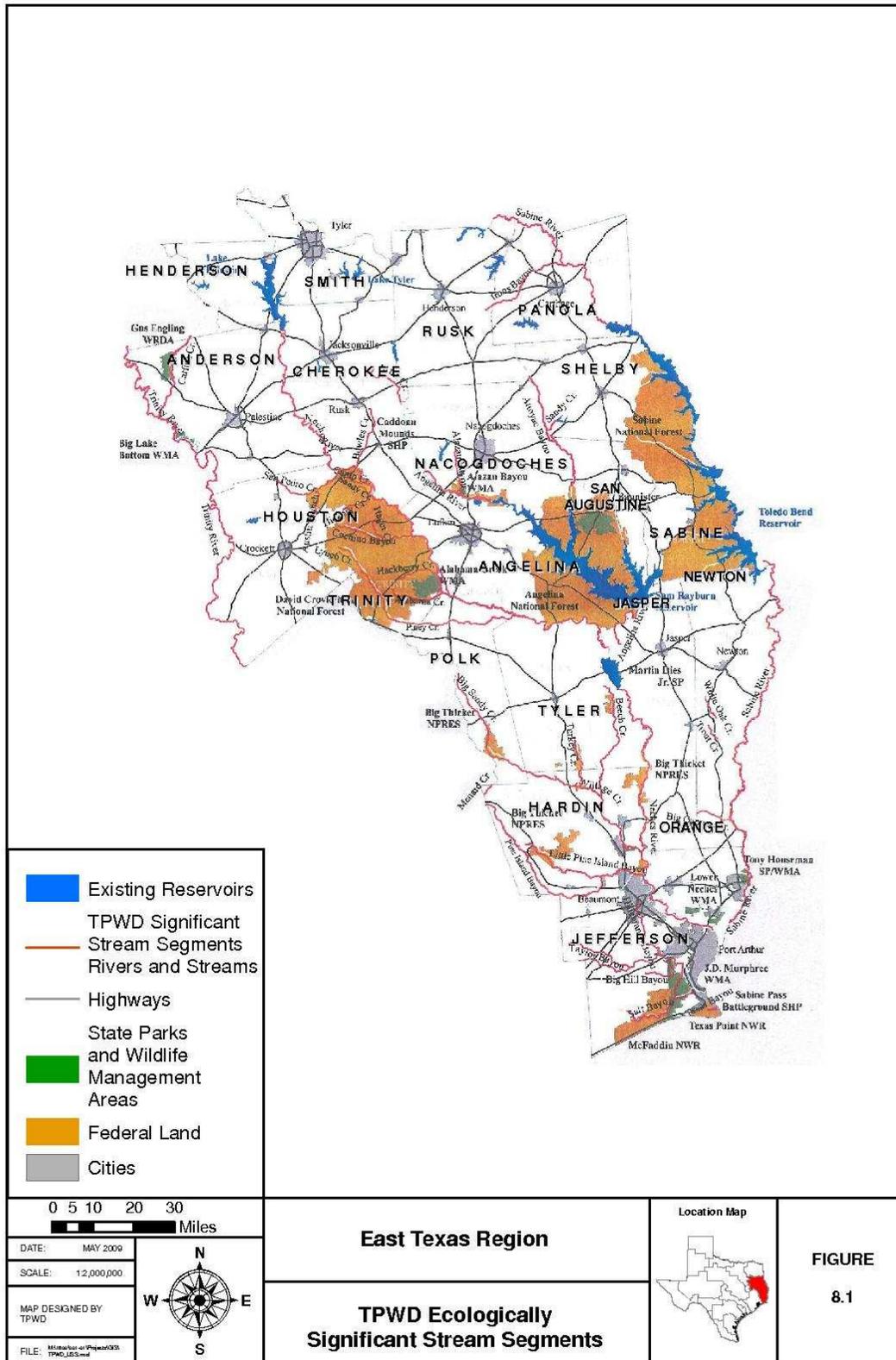
- (1) **Biological function** – stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;
- (2) **Hydrologic function** – stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;
- (3) **Riparian conservation areas** – stream segments which are fringed by significant areas in public ownership including state and federal refuges,

wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas managed for conservation purposes under a governmentally approved conservation plan;

- (4) **High water quality/exceptional aquatic life/high aesthetic value** – stream segments and spring resources that are significant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or
- (5) **Threatened or endangered species/unique communities** – sites along streams where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species, and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.

To assist the ETRWPG with identifying potential stream segments for designation, the TPWD developed a draft report<sup>[1]</sup> of ecologically significant river and stream segments in the ETRWPA. The TPWD report identified 41 river and stream segments in the ETRWPA as ecologically significant and that might be considered for designation as unique stream segments. A map prepared by TPWD showing the locations of the 41 river and stream segments is presented on Figure 8.1.

The planning rules do not provide guidance on how many of the criteria need to be met as a prerequisite for consideration for designation as a unique stream segment. As an initial screening tool, the ETRWPG determined that those segments that meet three or more of the criteria would be further evaluated.



Only nine of the 41 segments have three or more applicable criteria. Table 8.1 presents a summary of the 41 segments identified by TPWD and which of the five criteria are identified by TPWD for each segment. Some of the segments are categorized as having threatened or endangered species or unique communities. The specific threatened or endangered species or unique community that is the basis for this categorization is presented in Table 8.2.

When the first regional water plans were prepared (2001), the RWPGs requested clarification of the intent of unique stream segment designations. The legislature addressed that issue in the 77<sup>th</sup> Legislative Session. The results are reflected in Section 16.051(f) of the Texas Water Code, which states,

“This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream designated by the legislature under this subsection.”

This implies that it would be irrelevant to consider recommending a segment for designation if it does not have potential to be a reservoir site.

Despite the above clarification, there continues to be concern among many regional water planning groups (including the ETRWPG) that designation of a stream segment might lead to additional unwarranted restrictions on the use of the segment, including water diversions and discharges of treated effluent. During the current round of regional water planning, representatives of Region C met with TCEQ, TWDB, and TPWD to discuss potential issues related to restrictions associated with unique stream segment designation. As a result of this meeting, the TWDB has determined that a stakeholder committee should be formed to address the potential concerns. The committee has not yet been formed. However, it is understood that recommendations of the committee should be developed before the next round of water planning is complete.

**Table 8.1 TPWD Ecologically Significant River and Stream Segments**

<b>River/Stream Segment</b>	<b>Biological Function</b>	<b>Hydrologic Function</b>	<b>Riparian Conservation Areas</b>	<b>High Water Quality/ Exceptional Aquatic Life/High Aesthetic Value</b>	<b>Threatened or Endangered Species/Unique Communities</b>
Alabama Creek			•		
Alazan Bayou	•		•		
Upper Angelina River	•		•		•
Lower Angeline River			•		•
Attoyac Bayou					•
Austin Branch			•		
Beech Creek			•	•	
Big Cypress Creek			•	•	
Big Hill Bayou	•		•		
Big Sandy Creek	•		•	•	
Bowles Creek			•		
Camp Creek			•		•
Catfish Creek			•	•	•
Cochino Bayou			•		
Hackberry Creek			•		•
Hager Creek			•		
Hickory Creek			•		
Hillebrandt Creek			•		
Irons Bayou				•	
Little Pine Island Bayou			•		
Lynch Creek			•		•
Menard Creek	•		•		
Mud Creek	•				•
Upper Neches River	•		•	•	•
Lower Neches River	•		•	•	•
Pine Island Bayou			•		
Piney Creek			•	•	•
Upper Sabine River	•			•	
Middle Sabine River	•		•		
Lower Sabine River	•			•	•
Salt Bayou	•		•		
San Pedro Creek			•		
Sandy Creek (Trinity County)					•
Sandy Creek (Shelby County)			•		•
Taylor Bayou	•		•		
Texas Bayou	•		•		
Trinity River	•		•		•
Trout Creek			•		
Turkey Creek			•		
Village Creek	•		•	•	•
White Oak Creek				•	

**Table 8.2 TPWD Threatened and Endangered Species/Unique Communities**

Threatened/ Endangered Species	Angelina River	Big Sandy Creek	Catfish Creek	Upper Neches River	Lower Neches River	Piney Creek	Sabine River	Trinity River	Village Creek
Paddlefish	•			•	•		•		
Creek chubsucker				•		•			
Sandbank pocketbook freshwater mussel					•				
Texas heelsplitter freshwater mussel					•			•	
Neches River rose-mallow				•					
Rough-stem aster			•						
Unique community		•							•

Six of the nine stream segments identified for further evaluation are not currently considered as potentially suitable for reservoir construction. Therefore, these segments have been eliminated from further consideration at this time. These segments are as follows:

- Angelina River (Segment 0611; Nacogdoches County)
- Big Sandy Creek (0608B)
- Catfish Creek (Segment 0804G)
- Neches River (Segments 0601/0602)
- Trinity River (Segment 0803/0804)
- Village Creek (Segment 0608)

Three segments include reaches that have been identified as potentially suitable for a reservoir site.

- Neches River (Segment 0604) – Rockland Reservoir and Fastrill Reservoir
- Piney Creek (Segment 0604D) – Rockland Reservoir

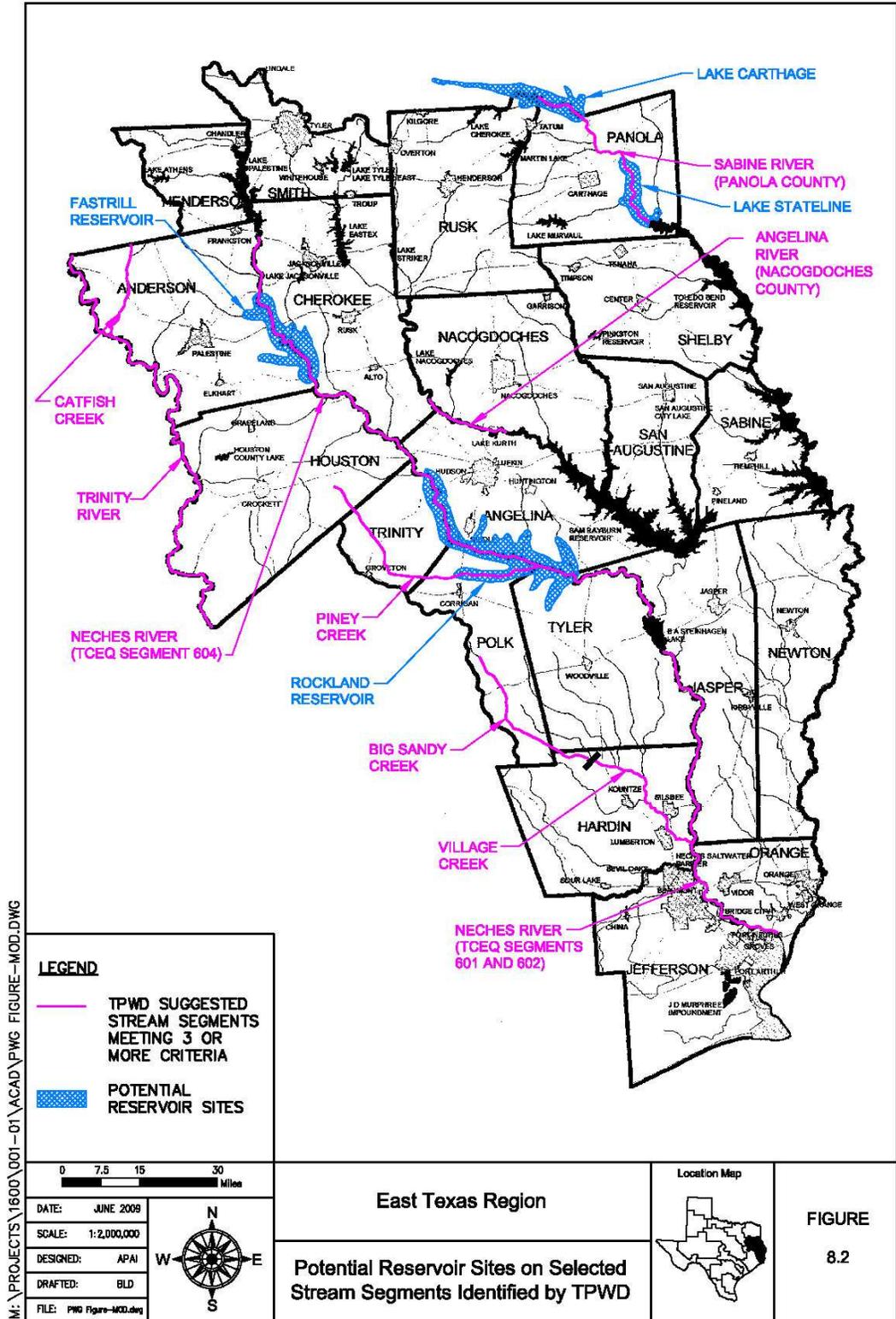
- Sabine River (Segment 0505; Panola County) – Lake Stateline and Lake Carthage

Figure 8.2 provides locations of the four proposed reservoirs with respect to potential unique stream segments.

Very little information currently exists on the relative value of using these sites for a reservoir compared to maintaining a riverine environment. Prior to proceeding with the construction of a reservoir at any of these sites, extensive environmental studies must be conducted to determine the extent and nature of potential environmental impacts and whether these impacts can be effectively mitigated. The information obtained through such environmental studies is the type of data needed to provide a basis for decisions regarding the relative merits of constructing a reservoir or preserving a riverine environment.

No regulatory purpose has been identified that would be served by a unique stream segment designation, other than precluding reservoir construction. Indeed, there are currently extensive regulations and programs to protect the environment in the ETRWPA.

The ETRWPA has a high proportion of land that has been assigned a special protective status. There are three national forests (Davy Crockett National Forest, Angelina National Forest, and Sabine National Forest) that encompass 475,000 acres. The Big Thicket National Preserve covers 97,000 acres. The McFaddin National Wildlife Refuge, Texas Point National Wildlife Refuge, J.D. Murphree Wildlife Management Area, Tony Houseman Wildlife Management Area, Engling Wildlife Management Area, Alabama Creek Wildlife Management Area, Alazan Bayou Wildlife Management Area, Lower Neches River Wildlife Management Area, Big Lake Bottom Wildlife Management Area, and E.O. Siecke State Forest encompass 138,000 acres. In addition, there are a number of state parks, state historic sites, and the Alabama and Coushatta Indian Reservation.



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Areas of the ETRWPA that are not part of a state or federal preserve are also protected by various regulatory programs. These activities include state and federal permitting activities, requirements for environmental assessments for certain activities that could adversely affect the environment.

At its regularly scheduled meeting in July 2009, the ETRWPG considered the above information and voted to not recommend any stream segments in the region for unique status. The ETRWPG concluded that sufficient programs are already in place to protect the regions streams from inappropriate reservoir construction. In addition, the ETRWPG prefers to allow the TWDB to study issues associated with unique stream segment designation before further considering potential designations in the ETRWPA.

## **8.2 Unique Reservoir Sites**

Regional water planning guidelines allow regional water planning groups to recommend sites of unique value for construction of new reservoirs. Considerations include physical characteristics (location, hydrology, geology, and topography), environmental factors, water availability and other pertinent features that make the site uniquely suited for water supply. The ETRWPA has a long history of water supply planning and reservoir development. There are numerous sites that have been identified as being hydrologically and topographically unique for reservoir development. Two sites in the ETRWPA are currently designated as unique: Lake Columbia and Fastrill Reservoir. Lake Columbia received its unique designation by the State Legislature, SB1362. Fastrill Reservoir was designated by the 79<sup>th</sup> Legislature through SB 3. Both of these sites are currently being pursued for development. Other sites have been considered for water supply development in the past and may be considered again for future supplies.

The ETRWPG considered potential reservoir sites for possible designation but did not designate any additional unique reservoir sites. The considered sites are described below.

Two future reservoir sites, Lake Columbia and Fastrill Reservoir, are identified as strategies to meet water shortages in the current planning cycle. Rockland Reservoir is identified as an alternative water management strategy for LNVA to meet its future water demands if reallocation of water in the Rayburn-Steinhagen system, or access to water from Toledo Bend Reservoir proves not to be viable.

There are several reservoir sites in the ETRWPA that have long been discussed as potential sources of water. The ETRWPG agrees with past evaluations of these sites as being hydrologically and topographically unique for reservoir construction. The ETRWPG recognizes that reservoirs can have major impacts on the environment and that protection of the environment is already afforded through a process which is more thorough than the regional water planning effort. The ETRWPG is not recommending these sites be designated as unique reservoir sites. The ETRWPG is recommending that these sites be recognized as potential long-term water management strategies for the time period more than fifty years in the future. The ETRWPG believes that the lengthy and thorough economic and environmental review process will determine if any of these reservoirs are constructed as opposed to any decision by the ETRWPG.

At its regularly scheduled meeting in December 2009, the ETRWPG voted to not recommend any proposed reservoir sites as unique during this planning cycle. Proposed sites, including the two sites already designated as unique, are included in Table 8.3, following.

**Table 8.3 Potential Reservoirs for Designation as Unique Reservoir Sites**

Major Water Provider	Reservoir Site
Angelina Neches River Authority	Lake Columbia (Already Unique Site)
	Ponta
Lower Neches Valley Authority	Rockland Reservoir (Alternate WMS)
Sabine River Authority	Big Cow Creek
	Bon Weir
	Carthage Reservoir
	Kilgore Reservoir
	Rabbit Creek
	State Hwy. 322, Stage I
	State Hwy. 322, Stage II
	Stateline
	Socagee
Upper Neches River Municipal Water Authority	Fastrill Reservoir (Already Unique Site)

In addition to the above sites, Lake Naconiche, located in northeast Nacogdoches County may also be another potential water supply. Lake Naconiche has a main purpose of flood control. The dam for Lake Naconiche has been completed and the lake is now impounding water. At normal pool elevation (348 ft. msl) the lake will impound 9,074 acre-feet. A brief description of each of the above reservoir sites follows. Appendix 8-A contains maps showing the proposed locations for each reservoir.

**8.2.1 Rockland Reservoir.** The Rockland Reservoir site is located on the Neches River at River Mile 160.4. Appendix 8-A, Figure 8-A.1 indicates the proposed location. The top of the flood pool would be at elevation 174 feet, msl with top of conservation pool of 165 feet, msl. It is estimated the reservoir site would affect 99,524 acres of wildlife habitat (Frye, 1990).

Rockland Reservoir was authorized for construction as a federal facility in 1945, along with Sam Rayburn, B. A. Steinhagen and Dam A lakes. A report in 1947 recommended construction of Sam Rayburn and B. A. Steinhagen with deferral of Rockland Reservoir and Dam A until such time the need develops. Rockland and Dam A were classified as inactive in 1954. A re-evaluation study performed in 1987 identified

the potential for significant benefits in the areas of flood control, water supply, hydropower, and recreation.

**8.2.2 Big Cow Reservoir** The Big Cow Reservoir is a proposed local water supply project on Big Cow Creek in Newton County. The Big Cow Creek dam site is located about one-half mile upstream from U.S. Hwy 190, west-northwest of the Town of Newton. It is in the Lower Sabine Basin. Figure 8-A.2 indicates the location of the proposed reservoir. The expected yield of the reservoir is 61,700 ac-ft per year with a storage capacity of 79,852 ac-ft and an area of 4,618 acres. The conservation level would be 212 feet msl.

The perennial streams that feed Big Cow Creek and abundant rainfall should provide sufficient inflow for considerable yield for a reservoir of this size.

**8.2.3 Bon Weir Reservoir.** The Bon Weir dam site is located on the state line reach of the Sabine River in Newton County, Texas and Beauregard Parish, Louisiana. The reservoir would extend from about 5 miles upstream of U.S. Hwy 190 to approximately Highway 63. Figure 8-A.2 indicates the location of the proposed reservoir. It was originally proposed for re-regulation of the hydropower discharges from Toledo Bend Reservoir and for the generation of hydropower. The reservoir, if constructed, would yield 440,000 ac-ft per year at a normal operating elevation of 90 feet above msl. The area and capacity would be 34,540 acres and 353,960 acre-feet, respectively.

It is estimated that the Bon Weir Reservoir would affect 35,000 acres of wildlife habitat (Frye, 1990). This includes several acid bogs/baygalls, which are unique and sensitive areas of the region. Several threatened and endangered species are known to occur in this area. No cultural resource survey has been conducted, but the site is expected to impact numerous archeological and historical sites in both Texas and Louisiana. The Clean Rivers Program Water Quality data reported possible concerns for elevated TDS and low dissolved oxygen during the summer months. The site also

requires congressional approval for construction of a dam, because it is on interstate navigable waters of the U.S.

**8.2.4 Carthage Reservoir.** The Carthage Reservoir is a proposed main stem project on the Sabine River in Panola, Harrison, Rusk and Gregg counties. It is located immediately upstream of the U.S. Highway 59 crossing and downstream of the City of Longview. Figure 8-A.3 indicates the proposed location. The yield of this reservoir, if constructed, would be approximately 537,000 ac-ft per year at a conservation pool elevation of 244 feet msl. The area and capacity would be 41,200 acres and 651,914 acre-feet, respectively.

Developmental concerns for Carthage Reservoir include bottomland hardwoods, aquatic life, lignite deposits and cultural resources. The downstream half of the site encompasses a USFWS Priority 1 bottomland hardwood area. This portion of the Sabine River is designated a significant stream segment and is home to several protected aquatic species (Bauer, 1991). Other potential conflicts with this site include oil and gas wells. Permitting for this reservoir will require an act of Congress since the dam is located on navigable interstate waters of the U.S. There is one active lignite mine, South Hallisville Mine No. 1, near the reservoir boundary.

The water quality assessment of the Sabine River (SRA, 1996a) indicates this segment of the river has possible concerns for nutrients, but the water quality is improving. The advantage of this reservoir is its large yield. The estimated yield of 537,000 ac-ft per year would provide for all projected needs well beyond the year 2060.

**8.2.5 State Highway 322 Stage I.** The Highway 322 Reservoir is a proposed local water supply project in Rusk County, upstream of Lake Cherokee. Figure 8-A.3 indicates the proposed location. The project, as originally proposed, was to be developed in two stages: 1) a dam and reservoir on Tiawichi Creek (Stage I), and 2) a separate dam and reservoir on Mill Creek (Stage II). The reservoirs were to be joined by a connecting channel that would allow one spillway to serve both dams.

The proposed Stage I dam is located on Tiawichi Creek, approximately one mile upstream of its confluence with the upper end of Lake Cherokee. The reservoir, at its normal operating elevation of 330 feet msl, would provide a net yield of 22,000 ac-ft per year. Its area and capacity would be 4,450 acres and 82,450 acre-feet, respectively. If Stage I is operated independently from Lake Cherokee, the firm yield of the reservoir would be reduced due to Lake Cherokee's superior water rights.

The primary developmental concern for the Stage I reservoir is active lignite mining. In 1995, the Oak Hill Mine expanded its current permit area to include approximately one third of the proposed Stage I reservoir area. There have been no environmental studies conducted for this site. Based on preliminary screening, the site is located outside priority bottomland hardwood areas, and there are no known water quality issues.

**8.2.6 State Highway 322 Stage II.** The State Highway 322 - Stage II reservoir is the second phase of the State Highway 322 water supply project in Rusk County. The Stage II dam would be located on Mill Creek, approximately one mile upstream of the existing Lake Cherokee. Figure 8-A.3 indicates the proposed location. Operated at the same level as Stage I (330 feet msl), this project would provide an increased yield to the Cherokee Lake system of 13,000 ac-ft per year with added storage capacity of 112,000 acre-feet. Stage II surface area would be 2,060 acres. The State Highway 322 project (Stages I and II) and Lake Cherokee could be operated as a system to provide a total yield of 53,000 ac-ft per year and maintain the recreational and aesthetic benefits currently provided by Lake Cherokee. If State Highway 322 project is operated independently from Lake Cherokee, the firm yield would be reduced due to Lake Cherokee's superior water rights.

The primary developmental concern for Stage II is the active lignite mining. Surface mining records indicate that the Oak Hill Mine permit encompasses much of the Stage II reservoir. Preliminary screening indicates no priority bottomland hardwoods in the reservoir area, and there are no known water quality issues. The advantages to this reservoir site is its location near the areas with projected water needs and the possibility

that when mining is completed, the site will already be cleared and ready for reservoir development.

**8.2.7 Stateline Reservoir.** The Stateline Reservoir is a proposed main stem project on the Sabine River, approximately eight miles upstream of Logansport, Louisiana and about four miles upstream from the headwaters of Toledo Bend Reservoir. Figure 8-A.3 indicates the proposed location. The project site is located in the southeastern section of Panola County and would have an estimated yield of 280,000 ac-ft per year. At the conservation level of 187 feet msl, the area and capacity would be 24,100 acres and 268,330 acre-feet, respectively.

Developmental concerns for this site include bottomland hardwoods, oil and gas wells, water quality, and permitting issues. The northern half of the site lies in a USFWS designated Priority 1 hardwood area. The southern half is a high quality wetland area and currently being considered for a wetland mitigation bank by the SRA. The mineral rights associated with the Carthage Oilfield significantly affect land acquisition for the reservoir. The Clean Rivers Program Water Quality data indicated possible concerns for elevated nutrient levels, metals, low dissolved oxygen and fecal coliform. This segment of the stream is also a known habitat for several protected aquatic species. Permitting for this reservoir will require an act of Congress since the dam is located on navigable interstate waters of the U.S. (Rivers and Harbors Act, 1899). Construction of the dam and reservoir may also require consent of Louisiana for the part that will impact the state of Louisiana (Sabine River Compact). As currently proposed, the dam site is located immediately upstream of the stateline reach and there is minimal impact to Louisiana lands. However, due to the close proximity of Toledo Bend Reservoir, it is unlikely that Stateline Reservoir would be more economical than Toledo Bend in meeting the needs of the Upper Basin.

**8.2.8 Socagee Reservoir.** The Socagee Reservoir site is located in the eastern portion of Panola County on Socagee Creek, approximately six miles upstream of its mouth. Figure 8-A.3 indicates the proposed location. The reservoir, at normal pool

elevation, would have a yield of 39,131 ac-ft per year. The reservoir area would be approximately 9,100 acres and the capacity would be about 160,000 acres.

Approximately 40 percent of the site overlies existing lignite deposits. As of 1986, there was no known exploitation of the lignite deposits, and there currently are no active mines within the area. One cultural resource site is reported in the reservoir boundary. There are no known water quality issues or priority bottomland hardwoods that affect this reservoir site. Socagee Reservoir could be used to meet the local needs of Panola County; however, Lake Murvaul, which has been designated for Panola County use only, has adequate yield to meet the future needs of Panola County.

**8.2.9 Lake Columbia.** The reservoir site is located predominantly in Cherokee County but extends into the southern portion of Smith County. Figure 8-A.4 indicates the location for Lake Columbia. The reservoir would be formed by construction of a dam on Mud Creek approximately 2.5 miles downstream of the U. S. Highway 79 crossing. The dam is expected to impound water approximately 14 miles upstream with an estimated surface of 10,000 acres. The reservoir is permitted for 85,000 ac-ft per year of water. It has a total storage volume at normal pool elevation, 315 feet msl, of 187,839 acre-feet. State of Texas Senate Bill 1362 designated the site for Lake Columbia as a site of unique value for the construction of a dam and reservoir.

**8.2.10 Fastrill Reservoir.** The Fastrill Reservoir would be located on the Neches River in Anderson and Cherokee Counties downstream of Lake Palestine and upstream of the Weches Dam Site. The dam would be located at River Mile 288. Figure 8-A.4 indicates the proposed location. Normal pool elevation would be at elevation 274 ft msl and would have an area of 24,950 acres based on digital topographic information. Recent analyses using the Neches River Basin Water Availability Model (WAM) indicate that the firm yield of Fastrill Reservoir may range from approximately 140,000 ac-ft per year (stand-alone operations) to about 155,000 ac-ft per year (system operations with Lake Palestine) subject to senior water rights and Consensus Criteria for Environmental Flow Needs.

Expected beneficiaries of the dependable water supply afforded by the development of Fastrill Reservoir and potential system operation with Lake Palestine include water user groups located within Anderson, Cherokee, Henderson and Smith Counties and the City of Dallas and its customer cities (located in Region C).

Since the completion of the 2006 regional water plans, the USFWS designated a wildlife refuge that lies partially within the footprint of the reservoir. This designation is currently being challenged through the legal system. At this time no decision has been made. In 2007, the Texas Legislature designated Fastrill Reservoir as a site of unique value for the construction of a dam and reservoir.

**8.2.11 Ponta Reservoir.** The Ponta Reservoir would be located on Mud Creek in Cherokee County east of Jacksonville, Texas. The dam site is located approximately one mile upstream from the Southern Pacific Railroad crossing over Mud Creek. Figure 8-A.4 indicates the proposed location. The normal pool elevation would be about elevation 302 ft msl and would have an area of 11,000 acres. Storage capacity at normal pool elevation would be 200,000 acre-feet. Previous studies have indicated that the reservoir could provide a dependable yield of 105,000 ac-ft per year. However, with the construction of Lake Columbia the yield would be substantially less.

**8.2.12 Kilgore Reservoir.** The Kilgore Reservoir is a proposed local water supply project located on the Upper Wilds Creek in Rusk, Gregg and Smith counties. Figure 8-A.5 indicates the proposed location of the reservoir. It was originally proposed to supplement the City of Kilgore's water supply. The project would provide a yield of 5,500 ac-ft per year at the normal operating elevation of 398 feet msl. At that level, the area and capacity would be 817 acres and 16,270 acre-feet, respectively.

Construction of this reservoir has never been initiated, and the City of Kilgore is using diversions from the Sabine (purchased from SRA and released from Lake Fork) and ground water for its water supply. However, this project still has the potential as a local water supply source in the Kilgore area should other proposed projects not be developed. Only preliminary studies have been performed for the Kilgore Reservoir and

no environmental impacts have been assessed. Based on preliminary screening data, the site is not located within a priority bottomland hardwood area; there are no known water quality issues and no active mines within the reservoir site.

**8.2.13 Rabbit Creek Reservoir.** Several reservoir projects have been proposed on Rabbit Creek for local water supply. The latest proposal for the City of Overton and surrounding communities was completed in 1998 (Burton, 1998). The proposed reservoir project is located on Rabbit Creek in Smith and Rusk counties, and would have a firm yield of 3,500 ac-ft per year. Figure 8-A.5 indicates the proposed location of the reservoir. This is considerably less yield than the previous studies, which is due in part to the smaller storage capacity and conservative inflows that were assumed for the study. In the latest study, the area would be 520 acres and the capacity would be 8,000 acre-feet at a conservation level of 406 ft msl. However, this yield is considered satisfactory to meet the regional demands of the area. Environmental review of the site reports no significant concerns that would preclude development. There are also no significant cultural resources in the area, no known water quality issues, and no active mining within the reservoir area.

The advantages of this reservoir site are the few developmental concerns. However, it was rejected as a water supply alternative in the 1998 study due to costs. A large percentage of the total costs were associated with a water treatment and distribution system. Due to the relatively low yield of Rabbit Reservoir, this project could only be considered for local water supply.

### **8.3 Legislative Recommendations**

Rules in 31 TAC 357.7(a)(10) state that regional water planning groups are to consider and make recommendations to the legislature regarding regulatory, administrative, or legislative issues that the group believes are needed and desirable to facilitate the orderly development, management and conservation of water resources and preparation for and response to drought conditions to ensure sufficient water will be available at a reasonable cost. For this update of the regional water plan, the Executive

Committee of the ETRWPG reviewed previous recommendations made pursuant to this rule and evaluated new potential recommendations. Proposed recommendations were brought to the ETRWPG for consideration. Legislative recommendations adopted by the ETRWPG are discussed following.

**8.3.1. Junior Water Rights.** The ETRWPG supports legislation allowing exemptions to junior water rights by contracts that reserve sufficient surface water to meet 125% of the total projected demand of the basin of origin for the next 50 years. Such contracts shall require the receiving basin to pay for development of future water supplies needed to maintain the 125% reserve for renewal of the water supply contract.

**8.3.2. Flexibility in Determining Water Plan Consistency.** The ETRWPG is concerned that small cities and unincorporated areas that fall under the group of “county-other” may not have specific water needs and water management strategies identified in the regional water plan due to the nature of aggregating these entities. As such there is concern that these entities may not be eligible for state funding assistance. The ETRWPG is also concerned that there is sufficient flexibility in identifying and implementing water management strategies as it pertains to permitting and funding such projects. Water suppliers need to have a full range of options as they seek to provide new water supplies for Texas' future. It is impossible to foresee all the possibilities for new water supplies in a planning process such as this, and changing circumstances can change the timing, amounts and preferred options for new supplies very quickly. The inclusion of alternate strategies in regional water planning is the first step in providing this flexibility. In addition, the ETRWPG recommends that the following steps be taken to address these concerns.

- The TWDB should add language to their guidance for funding that allows entities that fall under the planning limits to retain eligibility for state funding of water related projects without having specific needs identified in the regional water plans.
- The TWDB and the TCEQ should interpret existing legislation to give the maximum possible flexibility to water suppliers as they seek to serve the

public and provide new supplies. Changes in the timing of supply development, the order in which strategies are implemented, the amount of supply from a management strategy, or the details of a project should not be interpreted as making that project inconsistent with the regional plan.

- Willing buyer/willing seller transactions of water rights and treated water should not be controlled by this regulation. Such transactions may be beneficial to all concerned and may simply not have been foreseen in the planning process.
- The TWDB and TCEQ should make use of their ability to waive consistency requirements if local water suppliers elect strategies that differ from those in the regional plan.

### **8.3.3 Continued Funding by the State of the Regional Water Planning Process on a Five-Year Cycle.**

The ETRWPG believes the grassroots planning effort created by Senate Bill 1 is important to the state of Texas and should be continued. In addition, the ETRWPG believes that the most fair and efficient method of financing continuation of this effort for future planning cycles is to continue funding of this effort by the state with administrative expenses for the region being provided from sources within the region. There are important tasks that need to continue. Improvement of data for the next planning cycle is very important. State funding of those efforts needs to be made available.

**8.3.4. Groundwater Conservation Districts.** The ETRWPG encourages all areas in the ETRWPA not presently a part of a Groundwater Management District to either create one or join an existing district. These entities provide the best protection currently available for groundwater resources in the State of Texas.

**8.3.5. Unique Reservoir Designation.** The 79<sup>th</sup> Texas Legislature designated 19 sites as having unique value for the construction of a reservoir. One of these sites, Fastrill Reservoir, is located in the ETRWPA. As part of this designation, efforts to develop the site as a water supply reservoir must be taken by 2015 or the designation becomes null.

Many of these sites are identified for potential water supply way beyond the 2015 time frame. Loss of this designation could allow others to permanently limit the ability of developing a reservoir on the site. The ETRWPG recommends that the designation of unique reservoir for the sites currently designated be extended to 2060, which would be through the current planning period.

In order to properly plan for mitigation banks in relationship to unique reservoir sites or potential reservoir sites, the ETRWPG recommends that the USACE Mitigation Bank Review Teams have TWDB and appropriate regional water planning agencies be added to the review teams.

**8.3.6 Wastewater Reuse.** The ETRWPG recommends that current regulations as they pertain to wastewater reuse should be reviewed and amended, as necessary, to encourage the reuse of wastewater effluent.

**8.3.7 Funding.** In order to take advantage of the variety of funding options available through the TWDB, increased flexibility by the agency is needed. For example, TWDB guidance currently excludes the replacement of aging infrastructure from eligibility for funding through the existing Water Infrastructure Fund (WIF). The ETRWPG recommends that the TWDB expand existing programs to assist entities with funding replacement and repairs to aging infrastructure and/or allow replacement of water supply infrastructure to be funded through the WIF program. This would include existing well fields, transmission lines and storage facilities.

In addition, the TWDB does not provide for sufficient flexibility in categorical exclusions for Environmental Information Documents that are required for funding of water projects. Increasing flexibility regarding these exclusions could ease the crisis in funding available for water projects.

The TWDB offers the Economically Distressed Areas Program (EDAP) to certain areas in need of water projects. The EDAP provides grants, loans, or combination grant/loans when requirements are met:

- for water and wastewater services;
- in economically distressed areas; and
- present facilities are inadequate to meet residents' minimal needs

However, requirements to meet the EDAP are very difficult for local governments and areas to administer, causing otherwise eligible local governmental entities to elect to not pursue the EDAP funding. EDAP requirements should be revised to reduce unnecessary and difficult requirements for eligibility, including requirements for model subdivision planning.

**8.3.8 Environmental Flows.** Texas is currently in a process of identifying and recommending instream flows for the 23 river basins in Texas. The Neches and Sabine River Basins are two of the first basins to begin this process. The ETRWPG acknowledges the importance of these studies for the future of its water resources and supports the efforts of the various advisory teams and stakeholders in this endeavor. The ETRWPG also recognizes the need for water for growth and economic development. There is concern among local water rights holders that a significant portion of their water supply could be reallocated to meet instream flow demands. The ETRWPG recognizes that future flow conditions in Texas' rivers and streams must be sufficient to support a sound ecological environment that is appropriate for the area. However, the ETRWPG believes it is imperative that existing water rights are protected. In addition, SB 2 and SB 3 processes that relate to environmental flows should be closely coordinated with the SB 1 planning effort, involving regional water planning.

**8.3.9 Uncommitted Water.** The Texas Water Code currently allows the TCEQ to cancel any water right, in whole or in part, for ten consecutive years of non-use. This rule inhibits long-term water supply planning. Water supplies are often developed for ultimate capacity to meet needs far into the future. Some entities enter into contracts for supply that will be needed long after the first ten years. Many times, only part of the supply is used in the first ten years of operation.

The regional water plans identify water supply projects to meet water needs over a 50-year use period. In some cases, there are water supplies that are not currently fully utilized or new management strategies that are projected to be used beyond the 50-year planning period. To support adequate supply for future needs and encourage reliable water supply planning, the ETRWPG:

- Opposes unilateral cancellation of uncommitted water contracts/rights;
- Supports long term contracts that are required for future projects and drought periods; and
- Supports shorter term “interruptible” water contracts as a way to meet short term needs before long-term water rights are fully utilized.

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