A Proposal for Coordinating SENATE BILL 2 and SENATE BILL 3 Activities

January 25, 2012

DRAFT

Background

Environmental flow studies in Texas are now being conducted under two major legislative directives, Senate Bill 2 passed in 2001 by the 77th Texas Legislature, and Senate Bill 3 passed in 2007 by the 80 Texas Legislature. Senate Bill 2 focuses on instream flow needs exclusively, and the outcome will be detailed environmental studies and flow determinations for Texas' rivers to be considered by the Texas Commission on Environmental Quality (TCEQ) in its review of any management plan, water right, or interbasin transfer. Senate Bill 3 is an accelerated process to addresses environmental flow needs for both rivers and estuaries whose outcome will be flow recommendations and ultimately standards adopted by TCEQ. An important second output from the Senate Bill 3 process will be work plans that describe additional data and detailed studies needed to help refine the Senate Bill 3 recommendations and standards. Because funding is limited and there is the potential for overlap in the two processes, coordination between Senate Bill 2 and Senate Bill 3 activities is needed to maximize utility to both. Suggestions for how the processes might be coordinated are provided below.

Known factors that affect how the Senate Bill 2 and Senate Bill 3 processes might be coordinated include:

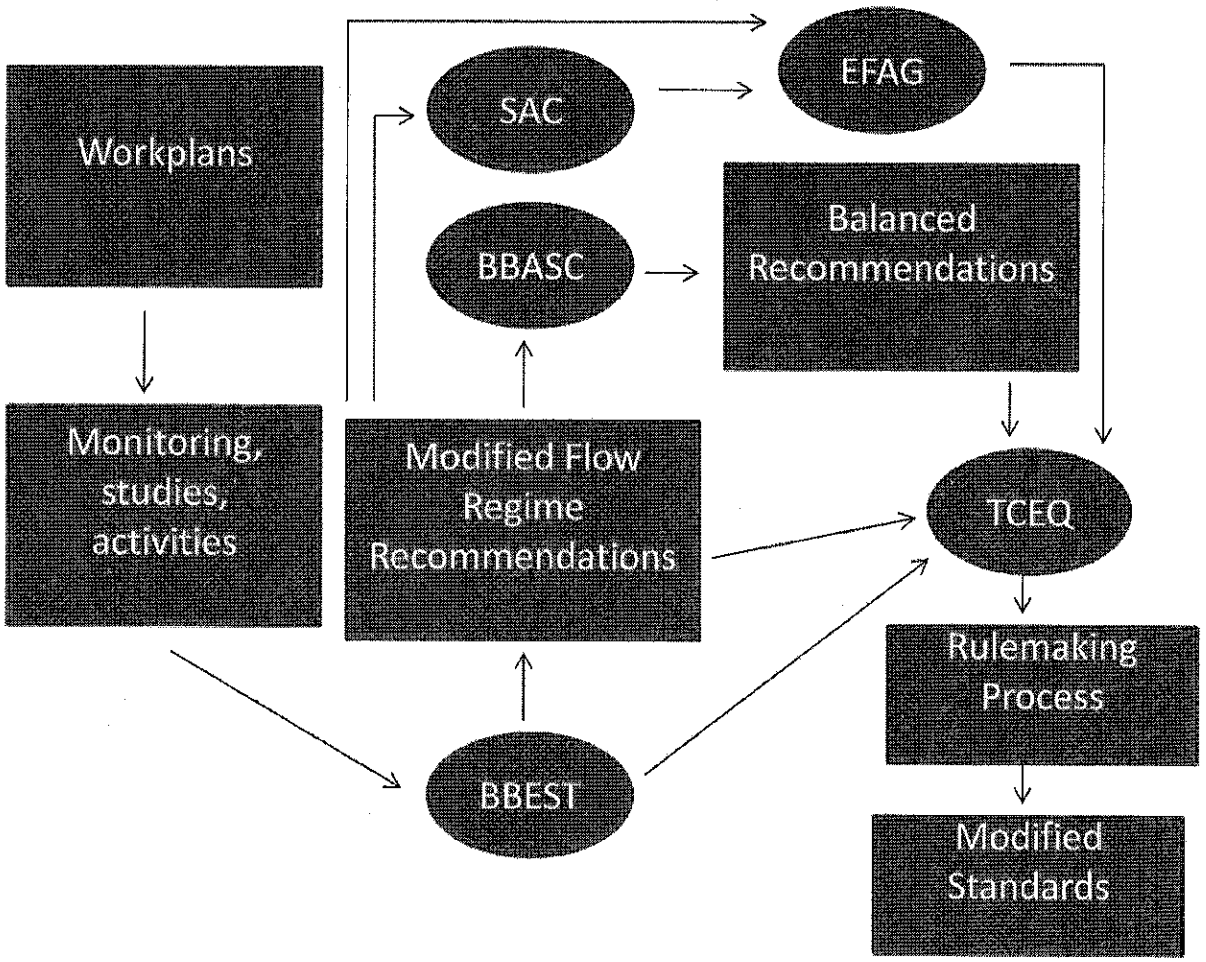
- present (FY 2012) funding is limited and is now fully allocated
- Senate Bill 3 activities leading up to development of flow recommendations are nearly completed for most systems with no further significant opportunity to use Senate Bill 2 study results in developing the flow recommendations
- Senate Bill 3 committees (Science Advisory Committee, basin and bay advisory stakeholder committees, and basin and bay expert science teams) will be abolished after Senate Bill 3 flow standards are set by TCEQ
- Senate Bill 3 calls for work plans that describe additional needed detailed studies and monitoring
- Senate Bill 3 calls for refinement of recommendations and standards based on additional studies and monitoring at least once every 10 years
- Senate Bill 2 calls for detailed studies be conducted for most of the state's rivers and streams
- Senate Bill 3 calls for the Science Advisory Committee to provide guidance to agency environmental flow programs

Future Studies, Adaptive Management, and a Potential Role for Senate Bill 2 Studies in Senate Bill 3

Schematics showing the Senate Bill 2 process, a proposed Senate Bill 3 adaptive management process (assuming that the Science Advisory Committee, basin and bay advisory stakeholder committees, and basin and bay expert science teams are not abolished), and the Senate Bill 3 adaptive management process integrated with Senate Bill 2 are shown below. Senate Bill 2 studies would continue to the point of developing data, tools, flow-ecology relationships, and flow determinations. The Science Advisory Committee would provide overview and guidance of the Senate Bill 2 processes and would comment on the determinations to the Environmental Flows Advisory Group. Data, tools, and flow-ecology relationships developed in Senate Bill 2 would be available for consideration by the basin and bay expert science team. Flow determinations developed by Senate Bill 2 would be provided to the basin and bay expert science teams for their consideration and to TCEQ as required by statute. The basin and bay expert science teams would use this information and any other information developed by the work plan (for example, covering other areas of the basin or the estuary) and submit its modified flow regime recommendations to the basin and bay advisory stakeholder committees for its consideration and to TCEQ, as was done with the original flow recommendations. The basin and bay advisory stakeholder committees would balance the basin and bay expert science teams's recommendations and provide comments to TCEQ. TCEQ would consider all information and through its rulemaking process develop modified standards.

While the process described above would further merge the two processes, legislative changes would be needed to remove the abolishment of the Science Advisory Committee, basin and bay advisory stakeholder committees, and basin and bay expert science teams.

Proposed Senate Bill 3 Adaptive Management Process (with existing Science Advisory Committee, basin and bay advisory stakeholder committees, and basin and bay expert science teams)



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Subject: Re: Agenda for SAC meeting on March 14

Bob,

Pasted below are the comments TPWD sent to TWDB on Feb 8 in response to TWDB's draft you forwarded. Due to scheduling issues we have not met yet, but we would like to coordinate with TCEQ and TWDB staff in an effort to reach agency consensus on these issues.

"We agree with your conclusion that it would be difficult to integrate the two processes, especially when that would require legislative changes to both programs. We also have concerns about the complexity of your outlined approach. After discussing your proposed approach it became clear that our position on the relationship of SB2 and SB3 has not changed significantly from the thoughts we expressed several months ago when we last met.From our perspective, SB2 and SB3 are distinct and independent legislatively mandated programs, but there are practical opportunities for the two programs to benefit from each other to provide the most efficient and economical approach to environmental flows investigations. SB2 studies present an independent, comprehensive, sound, and scientifically-based contribution to determining instream flow regimes. As contemplated by Texas Water Code sections 11.147(d), 11.0235(e) and 16.059(e), the products from the studies should be used by TCEQ to inform decisions on water allocation, with such decisions also being influenced by the SB3 adaptive management process. Many of the basin work plan recommendations contemplate the types of data collection and analysis that would be included in a comprehensive instream flow study; the inclusion of such work plan components in an SB2 study would lend efficiency to the adaptive management process. The agencies have developed important data in cooperation with SB2 study collaborators in the lower San Antonio River and middle and lower Brazos River studies and are on a path to do the same in the middle Trinity River in partnership with TRA. Consequently, the SB2 program appears on schedule to complete priority studies by the 2016 legislative deadline. In addition SB3 workplans have addressed SB2 studies. Many goals in the draft SB3 Trinity work plan are compatible with the instream flow study beginning in 2012. Recently the Guadalupe-San Antonio BBASC instream subcommittee identified as high priority a SB2 study of the Guadalupe River below Canyon Reservoir.We look forward to continuing discussions with TWDB and TCEQ and hope to find a tri-agency consensus approach that makes the best use of state resources to support SB2 and SB3 programs."

Thanks,
Cindy