



Environmental Flow Standards

Implementation and Effectiveness

Introduction

The Texas Legislature passed Senate Bill 1397 (SB1397) in 2023. This bill requires the TCEQ to submit a biennial report on the adopted environmental flow standards, with the first report due by Jan. 1, 2024. Texas Water Code (TWC) Section 11.1471(g) requires the biennial report to include the progress made over the previous biennium in implementing environmental flow standards; the status of any efforts to set aside unappropriated water; input provided by Texas Water Development Board (TWDB) and Texas Parks and Wildlife Department (TPWD) on their environmental flow activities and recommendations; and recommendations for the workplan required by Texas Water Code Section 11.02363(b).

Background

The Texas Legislature passed [Senate Bill 3](#)¹ (SB3) in 2007. SB3 set out a process for TCEQ to adopt environmental flow standards in rules that would apply to new appropriations of surface water. SB3 identified priority basin and bay systems, and TCEQ adopted standards for those systems. SB3 also included an adaptive management process that allowed the adopted standards to be revised if new information became available. To date, none of the local groups have requested a revision to their basin rules. Table 1 shows the relevant dates for adoption of the rules and adaptive management.

¹ www.capitol.texas.gov/tlodocs/80R/billtext/pdf/SB00003F.pdf#navpanes=0

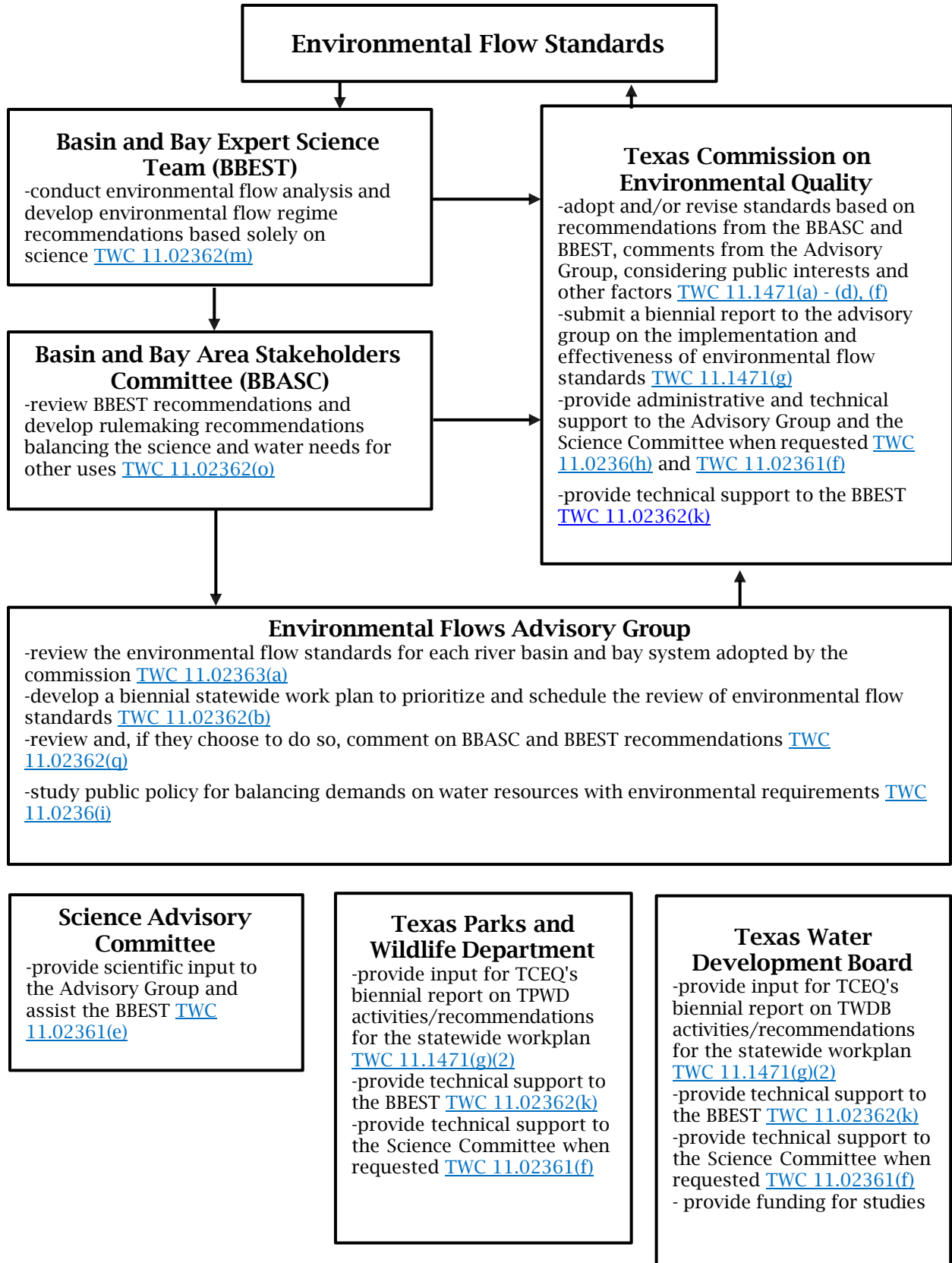
Table 1. Status of SB3 Rulemaking

| Senate Bill 3 Basin and Bay System | Rule Adoption Date | Review Cycle | Timeline for revision of standards (earliest date for TCEQ to consider any revisions to the rules) |
|---|---------------------------|-------------------------|---|
| General Provisions | April 20, 2011 | N/A | No specified time frame in the rule |
| Sabine and Neches | April 20, 2011 | 5 years | Sept. 1, 2019 |
| Trinity and San Jacinto | April 20, 2011 | 10 years | May 15, 2021 |
| Colorado and Lavaca | August 8, 2012 | 10 years | Aug. 30, 2022 |
| Guadalupe and San Antonio | August 8, 2012 | 10 years | Aug. 30, 2022 |
| Brazos | February 12, 2014 | 10 years | March 6, 2024 |
| Nueces | February 12, 2014 | 10 years | March 6, 2024 |
| Rio Grande | February 12, 2014 | 10 years | March 6, 2024 |

The SB3 Process

SB3, as enacted by the Texas Legislature, created a local basin stakeholder driven process overseen by the statewide Environmental Flows Advisory Group. That process remains largely unchanged with SB1397. Figure 1 provides a high-level outline of the SB3 process.

Figure 1. Senate Bill 3 Process



Implementation of the SB3 Standards

Water Rights Permitting

The adopted environmental flow standards can be found in [30 Texas Administrative Code Chapter 298](#)². The adopted standards include United States Geological Survey gaged measurement points, specific flow values for instream flow components, and freshwater inflow standards. TCEQ protects the adopted instream environmental flow standards in the water rights permitting process by including the standards as special conditions in all water right permits and amendments for new appropriations of water. TCEQ also evaluates each application for a new appropriation of water to ensure that granting the application would not impair any adopted freshwater inflow standards. In addition, in order to provide consistency in water rights permitting and to ensure the adopted standards are protected in all water rights permitting actions, TCEQ also includes the numerical values in the adopted standards as streamflow special conditions in other permits that are not for new appropriations of water.

Environmental Flow Set-Asides

SB3 provided that TCEQ establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs. In each of the rulemakings, TCEQ looked at the amount of unappropriated water remaining in each basin and bay system shown in Table 1. As a result of this review, TCEQ did not adopt set-asides for these basins during the rulemaking because of limited water availability. During the rulemaking process TCEQ recognized the value of environmental flow set-asides but also recognized the need to use some of the remaining unappropriated water in the state for future human water needs. TCEQ also agreed to reconsider water availability for set-asides if the adopted environmental flow standards were revised during the adaptive management process. None of the local groups have requested a revision to the adopted standards in their basins since the original rules were adopted. Therefore, TCEQ has not reexamined the issue of water availability for set-asides.

TCEQ's Environmental Flow Activities

As the SB3 process proceeds through the adaptive management phase, TCEQ continues to provide administrative assistance to the local groups. TCEQ assists the groups by maintaining contact lists, assisting with scheduling meetings, developing meeting minutes, and providing information or presentations to the groups when requested. TCEQ's activities throughout the environmental flow process are documented on its [Environmental Flows](#)³ website.

TWDB and TPWD Input

TWDB and TPWD provided input to this report on their environmental flow activities and recommendations as required by statute. TWDB's input is linked as [Appendix A](#) to this report and TPWD's input is linked as [Appendix B](#).

² www.tceq.texas.gov/goto/view-30tac

³ www.tceq.texas.gov/permitting/water_rights/wr_technical-resources/eflows

Recommendations

TCEQ recommends that Advisory Group consider the agency resources required to support the review and revision of the adopted environmental flow standards when developing the priorities and schedule for the review of environmental flow standards within the biennial statewide work plan.