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Thank you for the opportunity to submit comments on the proposed rule amendments to 30 TAC, Chapter 230, implementing Senate Bill 2440. The Environmental Defense Fund (EDF) is working to ensure sustainable and proactive management of groundwater resources in Texas.

EDF worked with the Texas Alliance of Groundwater Districts (TAGD) to develop and provide to TCEQ staff suggested revisions to the groundwater availability certification (GAC) rules. These comments were submitted on January 10th, but almost none of the suggested revisions were included in the staff proposal or otherwise discussed by staff at the May 10th TCEQ Commissioner's meeting. During the public hearing on June 24th, several groundwater conservation districts as well as TAGD, provided oral comments in support of the suggested revisions TAGD submitted in January. We encourage the Commissioners to strengthen the rules to incorporate some of the key recommendations provided by TAGD.

Given the increased pressure on groundwater resources in rural Texas and the fact that groundwater is often the only source of water for many rural communities as well as agriculture, it is critical that the GAC rules be strengthened to provide local governments and developers with accurate groundwater data and information to make informed decisions about whether there is sufficient groundwater to accommodate development.

EDF requests that TCEQ include the following in revised rules:

1. Include a definition of what constitutes "credible evidence." TCEQ should use the rules to provide counties and municipalities guidance on what constitutes "credible evidence" in issuing waivers to the requirement that a groundwater availability certification be required for platting. SB 2440 requires credible evidence of groundwater availability in issuing waivers under limited circumstances, but it does not define what constitutes credible evidence. Counties and municipalities do not have the experience or expertise to evaluate - without any guidance - what may constitute credible evidence of groundwater availability. TCEQ, as the agency tasked by the Legislature to provide rules and guidance on the form and content of the groundwater availability certification process should therefore include a definition of "credible evidence" to support a waiver of the groundwater availability certification requirement. EDF recommends that the following definition be added to 230.1(a-1):

"at a minimum the results of an aquifer test demonstrating sufficient groundwater availability that was completed no more than 3 years before the date of the plat application within a ¼-mile radius of the proposed subdivision and was conducted in compliance with any applicable rules of any groundwater conservation district in which the proposed subdivision will be located, and any other information required under the rules of such groundwater conservation district and the municipal or county authority, the municipal or county authority determines that sufficient groundwater is available and will continue to be available to the subdivision tract of land."

2. Update aquifer testing parameters. The GAC rules have not been updated in nearly 15 years.

During that time, GCDs with experience working with municipalities and counties conducting GACs have identified improvements that are needed to aquifer testing parameters. This rulemaking provides an opportunity to update key provisions regarding (1) the appropriate conditions for conducting aquifer testing and (2) under what conditions a prior aquifer test may be used in lieu of a new aquifer test. The accuracy of aquifer test results would be improved with the following additions to 230.8(c)(6):

"Aquifer tests shall be prohibited while nearby wells are pumping and during significant rain or recharge events. To ensure water levels are static, pre-test water-level measurements shall be conducted for at least 7 days prior to commencing an aquifer test under this section."

"Test and observation well(s) must be constructed, operated, and subsequently closed or converted in accordance with the applicable rules of TDLR and any applicable groundwater conservation district."

And the following addition to 230.8(c)(7):

"Use of existing aquifer tests and data should be time limited: (ii) the previous test was performed no more than 3 years before the date of the plat application;" and (vi) aquifer test data from the pumping well and observation well(s) from the previous test are available and calculations of hydraulic properties can be repeated and verified, which data and calculations shall be provided with the submission in accordance with 230.1(c)."

3. Transmittal of supporting information and data & availability of GACs. EDF appreciates the suggested improvements to the transmittal of supporting data and information in the proposed rules. Transmittal of complete, accurate, and replicable data and information to the applicable county or municipality, the TWDB, and any GCD is critical to ensure that the results and conclusions of a GAC can be verified. This data and information can also be valuable in better understanding aquifer characteristics and conditions, thereby improving groundwater management and decision-making. EDF recommends additional efforts to strengthen these provisions. Specifically, in 230.8(d), 230.9(d), 230.10(f), we recommend requiring data and supporting information be provided to the county or municipality, rather than only upon request. This will also ensure that data and information is part of the public domain and available for review. In addition, we suggest clarifying that all data, calculations, and information shall be provided in a format that allows for the replication of results (230.1(c), 230.6(d), and 230.8(d)).

4. Encourage counties and municipalities to coordinate and consult with their local GCD. In many areas of the state, a groundwater conservation district exists and has unique expertise regarding groundwater conditions within the district. Unfortunately, not all counties and municipalities are familiar with GCDs and may not be aware that they can provide support and consultation with respect to GACs. EDF recommends that TCEQ include language in 230.1(a) that:

"A municipal or county authority responsible for approving plats is encouraged to consult with any applicable groundwater conservation district throughout the plat application and approval process in complying with this Chapter." EDF also recommends similar language be included in 230.08(c) to encourage a county or municipality to work with the applicable GCD to develop any additional aquifer testing parameters.

5. Ensure consideration of regulatory parameters. Currently the GAC rules do not require any evaluation to determine whether the proposed method of water supply can be accomplished under the rules of an applicable GCD. This can lead to both confusion and frustration if a developer fails to consult with a GCD early and the county or municipality similarly does not involve the local GCD in a review of a GAC. In the worst case, it can leave homeowners without access to a water supply. To avoid this situation - we recommend that the rules specifically require that regulatory information be considered and included in a GAC. This could be accomplished by adding a new provision to 230.5:

(7) if the anticipated method of water distribution for the proposed subdivision requires a permit or permit amendment under the rules of the applicable groundwater conservation district, a description of how the proposed water supply and method of water distribution complies with Chapter 36, Texas Water Code, and the rules of the applicable groundwater conservation district or districts; and

Similarly, a determination regarding these regulatory parameters should be a part of the final certification through the addition of 230.10(f):

"Determination of regulatory parameters. Groundwater availability determinations shall take into account the rules of the applicable groundwater conservation district or districts, including but not limited to rules regulating certain aquifer formations, well depth, well spacing, and well permitting to reliably determine whether the available groundwater is in fact accessible under the rules of the applicable groundwater conservation district or districts. If the proposed subdivision is to be located within a designated priority groundwater management area under Chapter 35 of the Texas Water Code, then groundwater availability determinations shall take into account any water availability requirements adopted by the county to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply pursuant to § 35.019 of the Texas Water Code (Water Availability)."