

Sara Thornton

Please see the attached file.

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July 16, 2026

Ms. Gwen Rico
Texas Register and Rule Development
General Law Division (MC 205)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA ELECTRONIC FILING

Re: Stakeholder Comments on TCEQ Proposed Rule Improvement

Dear Ms. Rico:

This letter is submitted by Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of a coalition of major water suppliers, including North Texas Municipal Water District, San Jacinto River Authority, Upper Trinity Regional Water District, and Tarrant Regional Water District (collectively referred to herein as the "Coalition"), in response to the Texas Commission on Environmental Quality's ("TCEQ's") request for stakeholder feedback on agency rules identified for potential improvement through the Texas Regulatory Efficiency Office's ("TREO") rule review process.

The Coalition

The Coalition collectively will provide water on a wholesale and/or retail basis to approximately 6.2 million people by 2030 with that population increasing to 7.3 million in 2040 and 10.6 million in 2080. To address existing and future water demands of their respective customers, members of the Coalition regularly pursue state water right applications to divert, use, reuse, and impound state water for municipal, industrial, agricultural, and/or mining purposes of use. An important and critical water supply and management strategy for each member of the Coalition is water conservation. The Coalition members expend significant resources in the implementation of water conservation efforts and their respective water conservation plans. Water conservation, including water reuse, accounts for 29% of water supplies relied upon by members of the Coalition in 2030.

Background

In 2025, the Texas Legislature established TREO with the Office of Governor under Chapter 465 of the Texas Government Code.¹ The purpose of TREO is to establish and expand opportunities for implementing efficiencies in state agencies' rule adoption process and

¹ Act of September 1, 2025, 89th Leg., R.S., Ch. 1, § 2 (codified at TEX. GOV'T CODE Chapter 465).

regulatory review process, extending to every aspect of “the process by which state agencies adopt rules.”² TREO is to “assist state agencies in identifying unnecessary and ineffective rules; the effect and cost to this state and the regulated persons of the agencies’ rules and proposed rules; and opportunities to repeal or amend rules to provide effective protection to the public with the least cost and inconvenience to regulated persons.”³ TREO is also charged “to coordinate with state agencies to reduce rules or other regulatory requirements, including by eliminating unnecessary or ineffective rules or other regulatory requirements; and reducing the inefficiencies resulting from rules or other regulatory requirements adopted by the agency.”⁴ As required by statute, TREO developed and finalized the “Regulatory Reduction Guide” (the “Guide”) on April 28, 2026 to assist state agencies in regulatory reduction and efficiency.⁵ On June 25, 2026, TCEQ released its list of rules identified for potential improvement through the TREO rule review process and requested stakeholder comments on this list.

Overall Comments

The Coalition appreciates the opportunity to provide comments on TCEQ rules identified for potential improvement through the TREO rule review process. The list of rules prepared by TCEQ for potential improvement reflects an extensive TCEQ staff effort. The Coalition fully supports TCEQ’s efforts and generally agrees that the identified rules are obsolete, duplicative, ineffective, overly burdensome, and/or unnecessary and will look forward to participating in the forthcoming rulemaking to officially improve TCEQ’s rules. Given the Coalition’s significant interests in water rights permitting and water conservation, the Coalition provides the following detailed comments on TCEQ’s listed rules for Chapters 288, 295, and 297.

Chapter 288

TCEQ first adopted rules on water conservation plans in 1993 “to provide guidance with respect to the development and contents of water conservation plans submitted to the TCEQ...as required by the Texas Water Code, §11.1271 and §11.134.”⁶ In 1999, TCEQ made revisions to some of the regulations on water conservation plans and also adopted rules on drought contingency plans as required by Texas Water Code §§ 11.1271 and 11.1272.⁷ Since the rule revisions in 1999, the rules on water conservation and drought contingency plans have been relatively unchanged.

The Coalition generally agrees with TCEQ’s proposed rule improvements for Subchapters A and B of Chapter 288. The definition section for Subchapter A is outdated, and in accordance with the Guide, the definitions should be revised as appropriate. For example, the

² TEX. GOV’T CODE § 465.0052(a)(1)(2)(A)&(B).

³ TEX. GOV’T CODE § 465.0052(a)(2).

⁴ TEX. GOV’T CODE § 465.0052(a)(4).

⁵ TEX. GOV’T CODE § 465.0054; TREO, Regulatory Reduction Guide For State Agencies (April 28, 2026), available online at <https://efficiency.texas.gov/treo-files/Reduction%20Guide.pdf>.

⁶ 17 Tex. Reg. 7647 (1992); 18 Tex. Reg. 2558 (1993).

⁷ 24 Tex. Reg. 948, 949 (1999).

definition of “reuse” is currently defined as “the authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.” This current definition fails to recognize the authority to indirectly reuse water pursuant to Section 11.042 of the Texas Water Code.

As acknowledged by TCEQ in its Texas Regulatory Impact Matrix (“TRIM”), water supply management has changed significantly in the past 10 to 20 years due to scarcity of water supplies, more extreme drought conditions, increasing populations and water demands, and significant developments in technology. The current rules are too specific, with a one-size-fits-all approach, lacking flexibility to address these changing conditions in water supply management. Given the outdated nature of Subchapters A and B of Chapter 288, the Coalition agrees with TCEQ that rules should be reviewed and revised to ensure their applicability and effectiveness for water supply management today and into the future.

Section 288.7

The Coalition also strongly recommends that TCEQ consider repealing Section 288.7 of the water conservation plan rules. Section 288.7 remains relatively unchanged since its adoption in 1993 and provides as follows:

(a) A water conservation plan submitted with an application for a new or additional appropriation of water must include data and information which:

(1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed appropriation;
and

(3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

(b) It shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

The Coalition contends that Section 288.7 should be repealed or significantly revised based on the provisions of the Guide and Chapter 465 of the Texas Government Code. This rule effectively requires a water right applicant to amend its water conservation plan every time it prepares and submits an application for a new or additional appropriation of water to include the rule’s requested data and information. Such requirement is overly burdensome and unnecessary, not only because it requires amendments to the water conservation plan, but also because of the requirement for an alternatives analysis that adds considerable time and expense to the preparation and processing of a water right application. Logically, the provision does not make

sense because if two strategies are feasible neither can be authorized because they both have an alternative. Additionally, for a reuse water right application you are required to evaluate reuse (conservation) as an alternative, which does not practically make sense and really speaks to the outdated nature of this provision because reuse applications are now more the norm such that this provision isn't necessary to promote reuse.

No statutory requirement exists requiring a water right applicant, in its water conservation plan or otherwise, to undertake an alternative analysis. The Guide provides that rules should set forth “only what is necessary to meet the specific statutory objective...[and]...should provide the least restrictive form of regulation to meet the statutory objective.”⁸ Given that Section 11.1271 of the Texas Water Code—nor any other provision of the code—make any mention of the content of Section 288.7, the Coalition respectfully requests TCEQ consider the repeal of this overly burdensome, unnecessary, and costly regulation. Importantly, if Section 288.7 is repealed, the other rules in Chapter 288 on water conservation continue to effectively achieve the statutory intent of Section 11.1271.

Chapters 295 and 297

Chapters 295 and 297 set forth the procedural and substantive requirements for water right applications, and like Chapter 288, require revisions to bring the rules up to date, to improve effectiveness, and to streamline water rights permitting. The Coalition generally agrees with TCEQ's recommendations for improvements to Chapter 295 and Chapter 297 and will support TCEQ in its rulemaking efforts but has specific comments regarding TCEQ's rules in Sections 295.5 and 297.53.

Section 295.5

Revisions to Section 295.5 in particular are needed to conform this rule with the statute where the rule requires an applicant for a permit to use water for multiple purposes of use to state the amount that will be used for each purpose and Section 11.023(e) explicitly provides TCEQ discretion to issue a single volume of water for more than one purpose of use provided the annual use does not exceed the total appropriation. Not only does the statute not require the specification of an amount for each purpose, but the requirement is also overly burdensome, ineffective, and unnecessary since the single volume for use of the entire water right is sufficient for purposes of permitting the use of state water. As such, the proposed revision to this rule is consistent with the mandates and recommendations for rule improvement set forth in Chapter 465 and the Guide.

Section 297.53

The Coalition also recommends TCEQ review and revise Section 297.53 on habitat mitigation requirements in accordance with the Guide for clarity, conciseness, and to ensure the

⁸ TREO, Regulatory Reduction Guide For State Agencies at 6.

rule is necessary and proportionate to the regulatory objective. In 1999, existing provisions of Section 297.49 were transferred to Section 297.53 to clarify “existing criteria used to determine the manner and extent of mitigation required for aquatic and wildlife habitat lost as a result of the approval of the application pursuant to Texas Water Code Section 11.152.”⁹ The rules adopted in Section 297.53 substantially expanded TCEQ’s regulatory authority beyond the statutory requirements in Sections 11.147 and 11.152. Notably, neither Section 11.147 nor Section 11.152 require TCEQ to adopt rules to implement these statutes. The Guide explicitly recognizes that permissive rules representing “discretionary choices by the agency” are “candidates for possible amendment or repeal.”¹⁰ And as previously noted, the Guide provides that rules should only include what is necessary to meet the specific statutory objective and be the least restrictive form of regulation to meet the statutory objective.

Section 297.53(c) provides that “[a]n assessment under this section shall include the project site as well as potentially impacted habitat upstream, adjoining, and downstream of the project site.” The Coalition recommends TCEQ revise this rule to clarify its meaning because compliance with this rule has been challenged in contested case hearings. The Guide supports this recommendation to revise the rule as it directs agencies to review rules that are the subject of contested cases and administrative hearings.¹¹

The Coalition strongly recommends TCEQ repeal Subsections 297.53(e) and (f) or at least substantially revise these provisions. These subsections set forth provisions on goals and guidelines for mitigation of wetlands to achieve “no net loss” of wetland functions and values. Chapter 11 of the Texas Water Code includes no specific requirements regarding wetland loss or mitigation to support the inclusion of these rules. To achieve the clarity and conciseness sought by the Guide, rules that are “goals” and “guidelines” should be repealed to remove unnecessary detail and improve regulatory efficiency. Additionally, these subsections are duplicative of requirements of the U.S. Army Corps of Engineers and the Environmental Protection Agency under Section 404 of the Clean Water Act and associated federal regulations (“Section 404 Regulations”).¹²

The Guide provides that “[a] rule is duplicative when it imposes identical or substantially similar requirements to those that are already established elsewhere in statute, rule, or federal law...without adding substantive value.”¹³ Section 404 Regulations set forth extensive requirements for assessing impacts to and mitigation for the loss of waters of U.S., including wetlands.¹⁴ The goal of “no net loss of wetlands” is not only duplicative of the same federal goal

⁹ 24 Tex. Reg. 1162, 1166 (1999).

¹⁰ TREO, Regulatory Reduction Guide For State Agencies at 20.

¹¹ *Id.* at 14.

¹² 33 U.S.C. § 1344(b)(1).

¹³ TREO, Regulatory Reduction Guide For State Agencies at 25.

¹⁴ See Compensatory Mitigation for Losses of Aquatic Resources, 40 C.F.R. Part 230 Subchapter J and 33 C.F.R. Part 332.

established in 1990,¹⁵ but is also duplicative of the goal of “no overall net loss of state-owned coastal wetlands” established by the Texas Parks and Wildlife Department.¹⁶ For the reasons set forth above, the Coalition strongly recommends TCEQ repeal subsections (e) and (f) of Section 297.53.

Summary

Lloyd Gosselink Rochelle & Townsend, P.C. and the Coalition appreciate the opportunity to provide these comments and commend TCEQ staff on their efforts in identifying rules for potential improvement through the TREO rule review process. We look forward to working with TCEQ staff to assist in the development of proposed rules and to participate in any rulemaking process. Should you have any questions regarding these comments, please feel free to call me at the above-referenced number at your convenience.

Sincerely,



Sara R. Thornton

SRT

cc: *(via electronic mail)*

Ms. Jenna Covington, *North Texas Municipal Water District*

Mr. Billy George, *North Texas Municipal Water District*

Mr. Larry Patterson, *Upper Trinity Regional Water District*

Ms. Ronna Hart, *Upper Trinity Regional Water District*

Mr. Aubrey Spear, *San Jacinto River Authority*

Mr. Dan Buhman, *Tarrant Regional Water District*

Mr. Stephen Tatum, *Tarrant Regional Water District*

¹⁵ Memorandum of Agreement Between the Environmental Protection Agency and the Department of Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (1990), available at https://www.epa.gov/sites/default/files/2019-05/documents/1990_army-epa_mitigation_moa.pdf.

¹⁶ TEX. PARKS & WILD. CODE § 14.002(b)(2).