

Tom Entsminger

Thank you for your consideration of the following comments, submitted on behalf of the National Wildlife Federation:

General Comment:

Efficiency should be a factor in efforts to ensure keeping rules are up to date, but the impact of each proposal must be considered in context. For example, several of the listed proposals involve replacing rule text with a reference to statute on the basis that the rule language is duplicative. While changes like these do not necessarily have major environmental implications, we are concerned that they have negative impacts on the accessibility and comprehension of important rules by multiplying the sources the reader must consult. In the development of rule language pursuant to these recommendations, we urge TCEQ staff to think through the real-life outcomes each change will have for the public and the regulated community.

Specific Comments:

30 TAC § 210.53(a) and 30 TAC § 210.55

- We support these improvements as described because they would make it easier for facilities to reuse water under existing permits.
- We support use of reclaimed water as a conservation tool, but caution against removing the independent authorization step because it would remove the checkpoint that verifies water quality is actually fit for the intended reuse.

30 TAC Chapter 288, Subchapter A (WCP's) and 30 TAC Chapter 288, Subchapter B (DCP's)

- We agree that the rule would benefit from updating, but oppose the changes as currently suggested because strong conservation goals are a necessary part of securing our water future, and are only useful when based on accurate and detailed data. Rather than reducing what is referred to as the "high level of specificity" in the current rule, any updates should add information about current or planned desalination, return flow reuse, or wholesale relationships to allow for more effective local planning.

Although characterized here as highly specific, the water conservation rules actually are very general in nature and establish few minimum requirements. For example, for municipal uses supplied by public water suppliers, only a "promotional" rate structure—one that offers discounts for higher use levels—is prohibited and any other rate structure, such as one that discourages higher use levels, is discretionary. Rules should require measures to increase conservation, including strong rate structure signals and that is true regardless of the supply source (including desalination). As another example, for that same subchapter, the requirement to include the source of authority to enforce and implement a water conservation plan is insufficiently specific, plans should identify the specific approach or approaches that will be used in enforcing and implementing the plan. Improved water conservation, including implementation, is essential to meeting the state's rapidly growing water demands.

The language in Section 288.2 (a)(1)(C) about goals being unenforceable is overbroad, introducing undue ambiguity, and should be revised to make clear that, although the entity developing the goal is not subject to enforcement if the goal is not met, that entity may use appropriate means to enforce

measures designed to achieve the goal. Requirements for water conservation plans for industrial or mining use only include addressing certain categories of information: "plans must provide information in response to each of the following elements" 288.3 (a). There are no actual minimum requirements, specific or otherwise. That same pattern is followed for irrigation uses, wholesale water providers, and other uses. Although there are valid reasons why requirements for many of those categories may need to include reasonable flexibility, the water supply challenges facing Texas demand that the state, through its management of state water, step up its efforts to ensure that, regardless of type of use, water is used efficiently. Embracing less specificity without ensuring continued progress to increase efficiency of use is moving in the wrong direction. Serious conversations should be initiated to develop revisions to the water conservation rules that, while respecting the realities of varying circumstances, ensure that this precious resource is used much more efficiently than is happening currently.

The basis for contending that desalination, reuse of return flows, and wholesale water for uses other than municipal are difficult to accommodate under the water conservation rules is far from clear. Many water supplies have, or will have, a portfolio of water supply sources and, regardless of the source, the water should be used efficiently and water conservation plans should help to ensure that.

With respect to drought contingency plans, as with water conservation plans, the current rules should be updated but are not overly specific. Although it is true, for example, that water suppliers relying on desalination facilities may not encounter exactly the same challenges during drought as other suppliers, there are circumstances, such as equipment failure, that would be expected to result in the same types of challenges and the rules already allow flexibility in setting the triggers for drought responses. In addition, as noted above, many water suppliers have, or will have, a portfolio of supply sources making a comprehensive DCP critically important. That combination of sources will inform the triggers and measures in the DCP but will not negate the importance of having comprehensive DCPs. There is no obvious reason that a drought contingency plan, even if only applicable for a seawater desalination facility, should not address a recurrence of drought of record conditions, which might, because of reduced freshwater inflows and increased salinity levels if the water source is from a bay or estuary, result in reduced production of treated water. Some additional language addressing flexibility for desalination facilities may be appropriate, but the differences do not appear to be major. In addition, rule changes are needed to comply with the requirements of SB 2662, enacted in 2025, that DCPs include procedures for enforcement of mandatory water use reductions. The current rules do not ensure inclusion of such procedures.

30 TAC § 295.161(c)

- Although neither OPIC, as has always been true, nor TPWD can request a hearing, there still is value in providing notice to those entities, including ensuring that the opportunity to provide input has been honored, and the burden associated with providing that limited notice seems minimal.

30 TAC § 297.1(26)

- The proposed clarification may well result in increased confusion. Numerous permits already have been issued for instream use, including for environmental needs and bay and estuary inflows, and attempting to subdivide the definition at this point could be problematic and add to confusion rather than limit it. The limitation in Section 11.0237 (a) of the Water Code addresses new permits for "instream flows dedicated to environmental needs or bay and estuary inflows." That provision also expressly authorizes amending permits to add a "use for instream flows dedicated to environmental needs or bay and estuary inflows." It does not purport to impose any limitation on other types of

instream uses. That limitation on new permits for a subset of instream use can stand on its own without subdividing the definition. Section 11.023, in authorizing permits for all other beneficial uses, makes no distinction on authority to issue permits for instream flows or for bay and estuary inflows, making a proposed redefinition inappropriate, especially a definition that only applies in certain circumstances. If a change is needed, a simple reference to the restriction in Section 11.0237 (a) likely would be a better approach.

§305.62 (Consolidated Permits: Amendments)

- We support clarification of the standards for designating major vs. minor amendments, but oppose revision as described because it would allow the introduction of new waste streams without the important review and public input that occurs as part of the amendment process. While a TPDES/TLAP permit holder may not exceed their flow cap by adding new waste streams, TCEQ should monitor the impact of these changes on impaired stream segments and members of the public should have opportunities to provide input.



July 16, 2026

Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711
Submitted electronically

RE: Potential Rule Changes

Dear TCEQ:

Thank you for the opportunity to provide comments on the list of changes proposed as part of the Texas Regulatory Efficiency Office's (TREO) rule review process. Efficiency should be a factor in efforts to ensure keeping rules are up to date, but the impact of each proposal must be considered in context. For example, several of the listed proposals involve replacing rule text with a reference to statute on the basis that the rule language is duplicative. While changes like these do not necessarily have major environmental implications, we are concerned that they have negative impacts on the accessibility and comprehension of important rules by multiplying the sources the reader must consult. In the development of rule language pursuant to these recommendations, we urge TCEQ staff to think through the real-life outcomes each change will have for the public and the regulated community.

Specific comments:

Chapter 210 - Use of Reclaimed Water

- 30 TAC § 210.53(a) and 30 TAC § 210.55
 - We support these improvements as described because they would make it easier for facilities to reuse water under existing permits.
 - We support use of reclaimed water as a conservation tool, but caution against removing the independent authorization step because it would remove the checkpoint that verifies water quality is actually fit for the intended reuse.

Chapter 288 - Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements

- 30 TAC Chapter 288, Subchapter A (WCP's) and 30 TAC Chapter 288, Subchapter B (DCP's)

- We agree that the rule would benefit from updating, but oppose the changes as currently suggested because strong conservation goals are a necessary part of securing our water future, and are only useful when based on accurate and detailed data. Rather than reducing what is referred to as the “high level of specificity” in the current rule, any updates should add information about current or planned desalination, return flow reuse, or wholesale relationships to allow for more effective local planning.

Although characterized here as highly specific, the water conservation rules actually are very general in nature and establish few minimum requirements. For example, for municipal uses supplied by public water suppliers, only a “promotional” rate structure—one that offers discounts for higher use levels—is prohibited and any other rate structure, such as one that discourages higher use levels, is discretionary. Rules should require measures to increase conservation, including strong rate structure signals and that is true regardless of the supply source (including desalination). As another example, for that same subchapter, the requirement to include the source of authority to enforce and implement a water conservation plan is insufficiently specific, plans should identify the specific approach or approaches that will be used in enforcing and implementing the plan. Improved water conservation, including implementation, is essential to meeting the state’s rapidly growing water demands.

The language in Section 288.2 (a)(1)(C) about goals being unenforceable is overbroad, introducing undue ambiguity, and should be revised to make clear that, although the entity developing the goal is not subject to enforcement if the goal is not met, that entity may use appropriate means to enforce measures designed to achieve the goal. Requirements for water conservation plans for industrial or mining use only include addressing certain categories of information: “plans must provide information in response to each of the following elements” 288.3 (a). There are no actual minimum requirements, specific or otherwise. That same pattern is followed for irrigation uses, wholesale water providers, and other uses. Although there are valid reasons why requirements for many of those categories may need to include reasonable flexibility, the water supply challenges facing Texas demand that the state, through its management of state water, step up its efforts to ensure that, regardless of type of use, water is used efficiently. Embracing less specificity without ensuring continued progress to increase efficiency of use is moving in the wrong direction. Serious conversations should be initiated to develop revisions to the water conservation rules that, while respecting the realities of varying circumstances, ensure that this precious resource is used much more efficiently than is happening currently.

The basis for contending that desalination, reuse of return flows, and wholesale water for uses other than municipal are difficult to accommodate under the water conservation rules is far from clear. Many water supplies have, or will have, a portfolio of water supply sources and, regardless of the source, the water should be used efficiently and water conservation plans should help to ensure that.

With respect to drought contingency plans, as with water conservation plans, the current rules should be updated but are not overly specific. Although it is true, for example, that water suppliers relying on desalination facilities may not encounter exactly the same challenges during drought as other suppliers, there are circumstances, such as equipment failure, that would be expected to result in the same types of challenges and the rules already allow flexibility in setting the triggers for drought responses. In addition, as noted above, many water suppliers have, or will have, a portfolio of supply sources making a comprehensive DCP critically important. That combination of sources will inform the triggers and measures in the DCP but will not negate the importance of having comprehensive DCPs. There is no obvious reason that a drought contingency plan, even if only applicable for a seawater desalination facility, should not address a recurrence of drought of record conditions, which might, because of reduced freshwater inflows and increased salinity levels if the water source is from a bay or estuary, result in reduced production of treated water. Some additional language addressing flexibility for desalination facilities may be appropriate, but the differences do not appear to be major. In addition, rule changes are needed to comply with the requirements of SB 2662, enacted in 2025, that DCPs include procedures for enforcement of mandatory water use reductions. The current rules do not ensure inclusion of such procedures.

Chapter 295 – Water Rights, Procedural

- 30 TAC § 295.161(c)
 - Although neither OPIC, as has always been true, nor TPWD can request a hearing, there still is value in providing notice to those entities, including ensuring that the opportunity to provide input has been honored, and the burden associated with providing that limited notice seems minimal.

Chapter 297 - Water Rights, Substantive

- 30 TAC § 297.1(26)
 - The proposed clarification may well result in increased confusion. Numerous permits already have been issued for instream use, including for environmental needs and bay and estuary inflows, and attempting to subdivide the definition at this point could be problematic and add to confusion rather than limit it. The limitation in Section 11.0237 (a) of the Water

Code addresses new permits for “instream flows dedicated to environmental needs or bay and estuary inflows.” That provision also expressly authorizes amending permits to add a “use for instream flows dedicated to environmental needs or bay and estuary inflows.” It does not purport to impose any limitation on other types of instream uses. That limitation on new permits for a subset of instream use can stand on its own without subdividing the definition. Section 11.023, in authorizing permits for all other beneficial uses, makes no distinction on authority to issue permits for instream flows or for bay and estuary inflows, making a proposed redefinition inappropriate, especially a definition that only applies in certain circumstances. If a change is needed, a simple reference to the restriction in Section 11.0237 (a) likely would be a better approach.

Chapter 305 – Consolidated Permits

- §305.62 (Consolidated Permits: Amendments)
 - We support clarification of the standards for designating major vs. minor amendments, but oppose revision as described because it would allow the introduction of new waste streams without the important review and public input that occurs as part of the amendment process. While a TPDES/TLAP permit holder may not exceed their flow cap by adding new waste streams, TCEQ should monitor the impact of these changes on impaired stream segments and members of the public should have opportunities to provide input.

We look forward to providing detailed input during the formal rulemaking processes for many of the proposed improvements, and appreciate this opportunity to comment on the list before those processes begin.

Sincerely,

Tom Entsminger and Jennifer Walker
National Wildlife Federation

Myron Hess
Tributary Consulting