TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Proposed Rulemaking

AGENDA REQUESTED: June 18, 2014

DATE OF REQUEST: May 30, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2013-2039-RUL. Consideration for publication of, and hearing on, proposed amended Sections 311.61 and 311.62 of 30 TAC Chapter 311, Subchapter G, Watershed Protection, and the addition of Section 311.67.

The proposed rulemaking would correct definitions of the Benbrook Lake water quality area and Benbrook Lake watershed, modify the scope of the subchapter, and add a new section on nutrient control requiring a total phosphorus limit for certain discharges within the Benbrook Lake water quality area and watershed. (Gregg Easley, Stefanie Skogen) (Rule Project No. 2014-006-311-OW)

L'Oreal W. Stepney, P.E.
Deputy Director

David Galindo
Division Director

Patricia Durón *for* Bruce McAnally
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** May 1, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2013-2039-RUL

Subject: Commission Approval for Proposed Rulemaking
Amendments to 30 TAC Chapter 311: Watershed Protection
Rule Project No. 2014-006-311-OW

Background and reason(s) for the rulemaking:
On February 6, 2013, the Tarrant Regional Water District (petitioner) filed a petition for rulemaking that proposed amending 30 TAC §311.61, Definitions, and §311.62, Scope, and adding §311.67, Nutrient Control, to correct the definitions of Benbrook Lake water quality area and Benbrook Lake watershed, modify the scope of the subchapter, and require an effluent limit of 1.0 milligram per liter (mg/L) for total phosphorus for new or amended domestic wastewater discharges to the Benbrook Lake water quality area and Benbrook Lake watershed based on discharge flow volume and location. Besides correcting definitions, the purpose of the requested rulemaking was to protect water quality in Benbrook Lake by limiting additional nutrient enrichment in the reservoir and the associated problems that enrichment can cause.

In support of its request, the petitioner demonstrated through studies and analyses that elevated concentrations of nutrients and their primary response variable, chlorophyll-*a*, are currently causing water quality problems in Benbrook Lake (i.e., taste and odor issues due to blue-green algae proliferation) and that levels of these parameters have been increasing over the past 20 years and are likely to continue this trend with predicted population growth in the contributing watershed. Furthermore, the Texas Commission on Environmental Quality (Commission) Texas Integrated Report of Surface Water Quality has reported chlorophyll-*a* or excessive algal growth concerns in Benbrook Lake in all biennial report years dating back to 2002.

This rulemaking is not required by new or revised state or federal laws or regulations. Water Quality Division staff determined that the proposed rulemaking is an appropriate mechanism for regulating nutrients in Benbrook Lake after considering the following:

A) Use of Site-Specific Numeric Criterion for Chlorophyll-*a*

In 2010, the Commission adopted a chlorophyll-*a* criterion of 27.15 micrograms per liter for Benbrook Lake in the Texas Surface Water Quality Standards. The purpose of the criterion was to maintain water body uses and help identify eutrophic conditions associated with excessive nutrients. In addition to serving as a benchmark for surface water quality monitoring data collected in Benbrook Lake, the criterion would have been used in a nutrient screening exercise to determine if new or expanded wastewater

discharges would cause a violation of the reservoir criterion or induce excessive growth of aquatic vegetation and, therefore, require nutrient controls. However, the United States Environmental Protection Agency disapproved the Benbrook Lake criterion for Federal Clean Water Act uses, contending that it would not protect water body uses from the effects of high chlorophyll-*a* concentrations. The Commission will continue to explore options for assigning nutrient criteria for Benbrook Lake.

B) Use of Existing Wastewater Discharge Review Procedures

In the *Procedures to Implement the Texas Surface Water Quality Standards,* the Commission has nutrient screening procedures that allow for the assessment of potential nutrient impacts from wastewater discharges on a permit-by-permit basis and provide guidance on the application of nutrient controls where warranted. These screening procedures include discharge applicability criteria, such as the volume of discharge and the discharge point distance from a downstream reservoir, that indicate whether an effluent limit for total phosphorus is recommended for a particular permit. In using the nutrient screening procedures, there may be cases where smaller dischargers (e.g., less than 0.25 million gallons per day (MGD)) that are close to the reservoir (less than five miles) or larger dischargers more distant from the reservoir may not be required to limit total phosphorus. Furthermore, predicted changes in total phosphorus or chlorophyll-*a* concentrations (factoring in a future approved chlorophyll-*a* criterion for Benbrook Lake) in the main body of the reservoir, resulting from a wastewater discharge, which do not exceed thresholds specified in the screening procedures would not result in a total phosphorus effluent limit recommendation. The potential cumulative phosphorus loading from these situations could contribute to nutrient enrichment in the reservoir.

C) Watershed Protection Rule Approach

The proposed rules would consistently require a total phosphorus limit of 1.0 mg/L for all domestic wastewater discharges that meet the proposed volume and distance-from-reservoir criteria. Furthermore, the rulemaking would not impede the Commission's ability to impose more stringent total phosphorus limits, as determined to be necessary, for those discharges to which the rulemaking would apply, nor would it preclude total phosphorus requirements being applied to discharges not covered by the rulemaking. Currently, the area to which the proposed rules would apply contains seven domestic wastewater dischargers. Of those seven dischargers, two are located within the Benbrook Lake water quality area (within five miles of the reservoir normal pool elevation), but the volume of their discharges are each well below 0.10 MGD. The five remaining dischargers are within the Benbrook Lake watershed (outside the water quality area and below the upstream Lake Weatherford dam), and three of those five dischargers currently meet the volume criterion for the proposed rules. One of the three eligible dischargers already has a 1.0 mg/L total phosphorus permit effluent limit. Given the relatively small area to which the proposed rules would apply, the small number of existing dischargers in the targeted area, and the lack of opposition to the proposed rulemaking (discussed further below), the Executive Director (ED) agrees

that amending Chapter 311, Subchapter G would be an effective and appropriate mechanism to address nutrient-related water quality issues in Benbrook Lake.

Scope of the rulemaking:

A) Summary of what the rulemaking will do:

The proposed rules will:

- Correct the existing definitions of Benbrook Lake water quality area and Benbrook Lake watershed, which define the areas to which the existing and proposed Benbrook Lake watershed protection rules apply. The current definitions reference Lake Benbrook instead of Benbrook Lake, and the upstream boundary of the Benbrook Lake watershed is improperly defined.
- Add a daily average total phosphorus effluent limit of 1.0 mg/L for new discharge permits or existing permits that increase flow within the Benbrook Lake water quality area with a permitted annual or daily average flow greater than or equal to 0.10 MGD.
- Add the same effluent limitation for new discharge permits or permits that increase flow within the Benbrook Lake watershed, but outside the Benbrook Lake water quality area, with a permitted annual or daily average flow greater than or equal to 0.25 MGD.

B) Scope required by federal regulations or state statutes:

None.

C) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which authorizes the commission to promote the maximum conservation and protection of the quality of the environment and natural resources of the state;
- TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state;
- TWC, §26.027, which authorize the commission to issue permits; and

- TWC, §26.121, which authorizes the commission to prohibit unauthorized discharges.

Effect on the:

A) Regulated community:
This would require dischargers with new or amended discharges that meet the proposed volume and location criteria to limit their effluent phosphorus concentrations. For affected dischargers, this could involve additional expenses to implement phosphorus removal technologies.

B) Public:
The public could benefit from improved water quality in Benbrook Lake. The public could also experience higher wastewater utility rates due to potentially higher wastewater treatment costs.

C) Agency programs:
Implementation of the proposed rules would not require any changes in current wastewater permitting program staffing and would not cause an increase in workload. It is possible that the Commission could see an increase in watershed protection rule requests of this nature, which would require ED staff time to evaluate each request. Any future watershed rule protection requests would be evaluated on a case-by-case basis.

Stakeholder meetings:
On April 1, 2013, the Commission instructed the ED to: 1) solicit stakeholder input on all the issues raised in the district's petition and on any other issues that were relevant to the issues raised in the petition and take appropriate action, and 2) report back to the Commission within nine months, unless rulemaking had been initiated following the stakeholder input. Notices of a public stakeholder meeting regarding the rule petition and associated open comment period were sent to representatives of area municipalities; state, county, and local officials; environmental groups; wastewater discharge permittees; and state and federal resource agencies. Water Quality Division staff requested that stakeholders provide comments on the proposed changes to the Commission's rules. The stakeholder meeting was held on August 7, 2013, in Aledo, Texas, and written comments were accepted until September 9, 2013. Staff received comments from Texas Parks and Wildlife Department (TPWD), Lone Star Chapter and Greater Fort Worth Regional Group of the Sierra Club, and the Town of Annetta. The TPWD and Sierra Club comments were supportive of the rule petition. None of the comments received expressed opposition to the proposed rule changes.

Potential controversial concerns and legislative interest:
There are no known controversial concerns or legislative interest at this time.

Re: Docket No. 2013-2039-RUL

Will this rulemaking affect any current policies or require development of new policies?
The rulemaking will complement current nutrient control policies and procedures at the agency and will not require development of new policies.

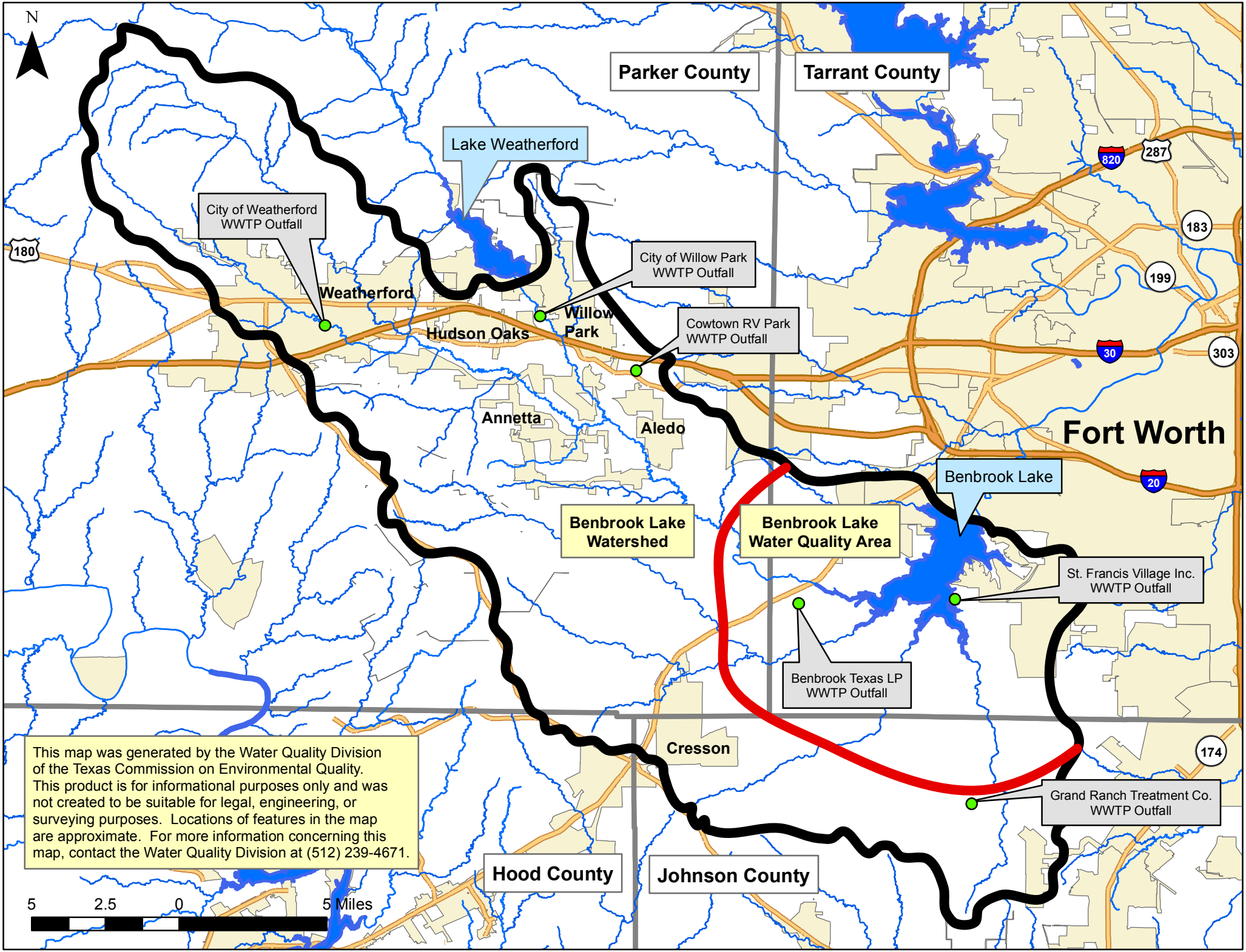
What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
Without the rulemaking, wastewater discharges within the Benbrook Lake watershed will continue to be evaluated for nutrient impacts based on agency screening procedures already in place. As discussed above, the reliance on these procedures alone may result in a less comprehensive approach towards reducing point source contributions of total phosphorus to the watershed and thereby lessen the likelihood of providing relief from the effects of nutrient enrichment in Benbrook Lake. An alternative to the proposed rulemaking that would achieve similar results would require changes to the existing nutrient screening procedures to add the same effluent limit requirements for total phosphorus for discharges within the Benbrook Lake watershed. There is no precedent for adding this level of specificity to the nutrient screening procedures, which are intended as guidance for evaluating discharges on a statewide basis. It would be more appropriate to address this issue in the context of a watershed protection rule.

Key points in the proposal rulemaking schedule:
Anticipated proposal date: June 18, 2014
Anticipated *Texas Register* publication date: July 4, 2014
Anticipated public hearing date (if any): July 24, 2014
Anticipated public comment period: July 4, 2014 - August 4, 2014
Anticipated adoption date: December 10, 2014

Agency contacts:
Gregg Easley, Rule Project Manager, (512) 239-4539
Stefanie Skogen, Staff Attorney, (512) 239-0575
Bruce McAnally, Texas Register Coordinator, (512) 239-2141

Attachments
Benbrook Lake Area Map
Benbrook Petition for Rulemaking

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Dennise Braeutigam
Office of General Counsel
Gregg Easley
Bruce McAnally


N
Parker County
Tarrant County
Lake Weatherford
City of Weatherford WWTP Outfall
City of Willow Park WWTP Outfall
Cowtown RV Park WWTP Outfall
Weatherford
Willow Park
Hudson Oaks
Annetta
Aledo
Fort Worth
Benbrook Lake
Benbrook Lake Watershed
Benbrook Lake Water Quality Area
St. Francis Village Inc. WWTP Outfall
Benbrook Texas LP WWTP Outfall
Cresson
Grand Ranch Treatment Co. WWTP Outfall
Hood County
Johnson County
180
820
287
183
199
30
303
20
174
This map was generated by the Water Quality Division of the Texas Commission on Environmental Quality. This product is for informational purposes only and was not created to be suitable for legal, engineering, or surveying purposes. Locations of features in the map are approximate. For more information concerning this map, contact the Water Quality Division at (512) 239-4671.
5 2.5 0 5 Miles

Law Offices of
BOOTH, AHRENS & WERKENTHIN
A Professional Corporation

Michael J. Booth
Fred B. Werkenthin, Jr.
Wil Galloway
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Carolyn Ahrens
Of Counsel

Joseph S. Babb
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February 6, 2013

Bridget C. Bohac
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Via Courier

RE: Petition for Rulemaking

Dear Ms. Bohac:

Enclosed for filing please find the *Original Petition for Rulemaking* submitted on behalf of Tarrant Regional Water District. Please file-stamp the extra copy of the Petition and return it to our courier.

Thank you for your assistance in this matter. Please contact us at (512) 472-3263 with any comments or concerns, or if any further information or documentation is required.

Very Truly Yours,

Fred. B. Werkenthin, Jr.

FBW/mh
Enclosure
cc: *via email*
Jim Oliver, Tarrant Regional Water District
Woody Frossard, Tarrant Regional Water District
Darrel Andrews, Tarrant Regional Water District
Mark Ernst, Tarrant Regional Water District

PETITION FOR RULEMAKING BY TARRANT REGIONAL WATER DISTRICT MODIFYING SUBCHAPTER G OF 30 TAC, CHAPTER 311	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

ORIGINAL PETITION FOR RULEMAKING

TO THE HONORABLE COMMISSIONERS:

NOW COMES Tarrant Regional Water District ("TRWD") and pursuant to 30 Texas Administrative Code ("TAC") Chapter 20 hereby presents this Petition for Adoption of a Rule ("Petition") to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") seeking modification of 30 TAC Chapter 311, Subchapter G to correct the descriptions of Benbrook Lake Watershed and Benbrook Lake Water Quality Area and to impose an effluent limitation of 1 milligrams per liter ("mg/L") total phosphorus for new or amended permits authorizing discharges greater than or equal to 0.10 million gallons per day ("MGD") to the Benbrook Lake Water Quality Area and for new or amended permits authorizing discharges greater than or equal to 0.25 MGD to the Benbrook Lake Watershed, and respectfully requests that the Commission consider this Petition and the proposed modified rule as set out herein ("Amended Rule") and initiate proceedings necessary to adopt the Amended Rule. Pursuant to the provisions of 30 TAC § 20.15, TRWD would respectfully show the following:

I. PUBLIC POLICY BENEFITS

This Petition is submitted in the interest of protecting the water quality of Benbrook Lake. Benbrook Lake currently has periodic taste and odor problems caused by the proliferation of blue-green algae that are related to excessive nutrient enrichment, primarily phosphorus enrichment. As discussed further below, Benbrook Lake and its

watershed are currently listed within the Texas 305b Report for water quality concerns due to this excessive nutrient enrichment.

The proposed Amended Rule would require that certain permits authorizing new or amended municipal wastewater discharges to waters in the Benbrook Lake Watershed include a requirement to treat total phosphorus to a concentration of 1 mg/L. These phosphorus treatment requirements would only apply to new or amended permits authorizing discharges greater than or equal to 0.10 MGD to the Benbrook Lake Water Quality Area, and new or amended permits authorizing discharges greater than or equal to 0.25 MGD to the Benbrook Lake Watershed. The need for phosphorus control is further supported by the East Parker County Watershed Planning Group Study[1], water quality analyses performed by TRWD, and TCEQ's water quality management information. By this Petition, TRWD asks that the Commission amend Subchapter G of 30 TAC Chapter 311. In addition, TRWD proposes that the Commission amend the definitions of "Benbrook Lake Water Quality Area" and "Benbrook Lake Watershed" for the reservoirs addressed in Subchapter G.

II. PETITIONER'S NAME AND ADDRESS

Petitioner's name is Tarrant Regional Water District. Petitioner's address is 800 E. North Side Dr., Fort Worth, TX 76102.

III. BACKGROUND

TRWD is an agency of the State of Texas created and operating pursuant to Chapters 49, 50 and 51 of the Texas Water Code and Acts of 1957, 55th Legislature, Chapter 268 of the Texas General and Special Laws (codified as amended at Tex. Rev.

[1] This work was funded by the Texas Water Development Board documented in a report titled the "Eastern Parker County Regional Wastewater Facilities Planning Report" ("EPC Report"), which was published in 2007.

Civ. Stat. Ann. art. 8280-207). TRWD provides surface raw water to municipalities and other users for municipal, domestic, industrial, mining, and irrigation purposes.

The service area of TRWD includes all or portions of Denton, Ellis, Freestone, Henderson, Johnson, Jack, Kaufman, Navarro, Parker, Tarrant, and Wise Counties. The largest population area within TRWD's service area is Tarrant County. TRWD serves almost all of Tarrant County either directly, or through TRWD's primary customers: the Cities of Mansfield, Arlington and Fort Worth, and the Trinity River Authority. Additionally, TRWD has contracted to provide water to various municipal communities outside of Tarrant County such as the Cities of Bridgeport, Weatherford, Decatur, Azle, Springtown, and Corsicana, among others. TRWD's wholesale municipal customers serve approximately 1.8 million people.

Currently, TRWD's water supply system utilizes seven reservoirs. TRWD owns and operates Eagle Mountain Reservoir, Bridgeport Reservoir, Cedar Creek Reservoir, and Richland-Chambers Reservoir. TRWD also utilizes Lake Arlington, Benbrook Lake, and Lake Worth through various contractual arrangements and state permits. TRWD and its major customers actively protect the water quality of the reservoirs that comprise the TRWD raw water supply system ("TRWD System Reservoirs") and each related watershed. TRWD has committed resources necessary to undertake a water quality sampling program of the TRWD System Reservoirs and contributing watersheds, and an inspection program of the wastewater dischargers within its jurisdiction. TRWD has also undertaken studies of nonpoint source pollution contribution to the reservoirs that it uses, and will continue to do so. From time to time, TRWD intervenes in permit proceedings of the TCEQ in order to protect the water quality of the TRWD System Reservoirs.

TRWD is a local government having enforcement and inspection powers within Tarrant County. *See* Tex. Water Code Ann. §§12.171 – 26 (Vernon 2000). TRWD inspects watersheds above the TRWD System Reservoirs for water quality problems. Besides the inspection and monitoring program, TRWD also sought and obtained additional water quality protections on and above the TRWD System Reservoirs that it owns, operates, or utilizes. As such, Texas Administrative Code, Title 30, Sections 311.61 - 311.66 provide that wastewater treatment plant operators discharging within five miles of the conservation pool of a TRWD System Reservoir must meet certain treatment and monitoring criteria.

IV. EASTERN PARKER COUNTY REGIONAL WASTEWATER FACILITIES PLANNING REPORT ("EPC REPORT")

TRWD, City of Aledo, the Town of Annetta, the Town of Annetta North, the Town of Annetta South, the City of Fort Worth, the City of Hudson Oaks, the City of Weatherford, the City of Willow Park, and Parker County Utility District Number One engaged Alan Plummer Associates, Inc. ("APAI") to study the area's needs for wastewater treatment, in regard to both volume and quality, because Eastern Parker County is expected to experience rapid growth in the coming years. Today, much of the area depends on individual septic systems for wastewater treatment. The cities in Eastern Parker County have expressed interest in the feasibility of regional wastewater treatment facilities. APAI determined that the regionalization of wastewater treatment in Eastern Parker County could:

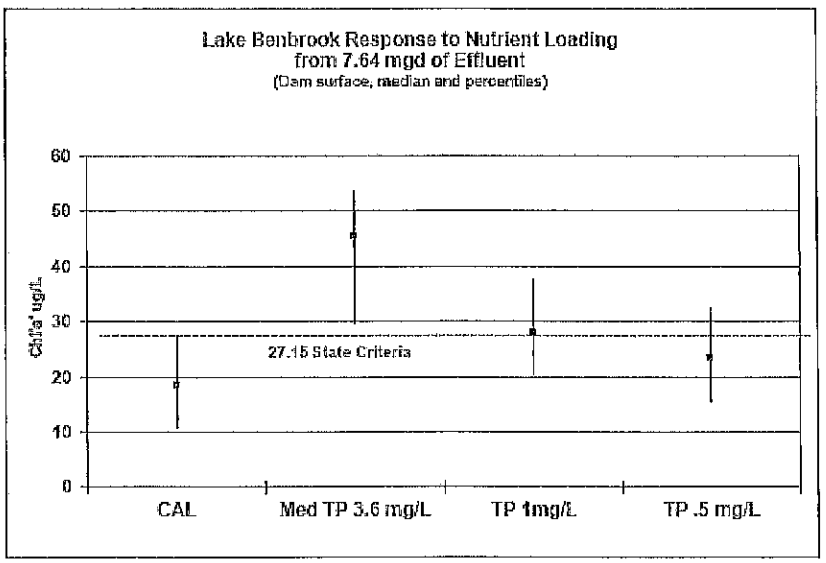
- Provide additional treatment capacity to meet projected growth;
- Reduce reliance on septic systems;

- Protect the quality of groundwater and surface water (both of which are drinking water sources) in the Clear Fork Trinity River Watershed;
- Reduce wastewater treatment costs through economies of scale;
- Provide updated wastewater treatment technology;
- Provide greater access to capital funding; and,
- Prevent proliferation of numerous, small utilities.

APAI also projected that the volume of wastewater for the study area would reach 6.8 MGD by 2020 and 9.4 MGD by 2030. *See* EPC Report, Table 3 - 4.

The EPC Report evaluated the quality requirements of effluent that would be needed in order to protect water quality. This was done using a Water Quality Assessment Simulation Program ("WASP") model of Benbrook Lake. The Benbrook Lake WASP model was calibrated based on 24 months of data for the period from January 1, 1992 to December 31, 1993. During the calibration period, approximately 1.9 MGD of effluent was being discharged into the Benbrook Lake Watershed. By 2030, the amount of effluent discharged into the Benbrook Lake Watershed is approximated to be 9.4 MGD, an increase of 7.5 MGD. The expected impact of the additional effluent was assessed by first projecting the increase in the amount of nitrogen and phosphorus that would be discharged. This was done based on measuring the nutrient concentrations being discharged by existing area wastewater treatment plants. The effect of this increase in nutrient loading caused by the projected increase in the volume of effluent expected to be discharged was assessed by the WASP model. The WASP model predicted that if the projected discharge of 9.4 MGD of wastewater contains the same concentration as existing wastewater flows, the Chlorophyll *a* concentration in Benbrook Lake would

more than double, going from 18.5 micrograms per liter ("ug/L") to about 45.4 ug/L. If total phosphorus is treated to a concentration of 1 mg/L, the median Chlorophyll *a* concentrations projected by the model would increase by about 50% to 28.2 ug/L, which approximates the Chlorophyll *a* criterion for the reservoir. In addition, the model predicted that if phosphorus levels were limited to 0.5 mg/L, projected Chlorophyll *a* concentrations would be 23.5 ug/L. *See* **Figure 1**.



WASP modeling results from the addition of 7.64 MGD of wastewater at three different Total phosphorus concentrations.

FIGURE 1

V. TRWD MODELING

In addition to its participation in the EPC effort, TRWD has collected water quality information regarding the reservoirs used in its water supply system, including Benbrook Lake. In 2010, TRWD sponsored a study, conducted by the University of Texas at Arlington, of trends in the water quality dataset for each of its reservoirs.[2] Among other findings, this report determined that over the last 20 years there are

[2] "Tarrant Regional Water District Water Quality Trend Analysis 1989-2009," July 2011.

significant increasing trends in the concentration of Chlorophyll *a*, total phosphorus, and total nitrogen in Benbrook Lake. During the study, the median Chlorophyll *a* concentration of the main pool of Benbrook Lake was 18.2 ug/l. TCEQ has established a 27.15 ug/L Chlorophyll *a* criterion for Benbrook Lake. The results of the trend study indicate that Benbrook Lake will exceed TCEQ's Chlorophyll *a* criterion for Benbrook Lake in just over 13 years. Any substantial increase in phosphorus loading will likely accelerate the increasing trend in Chlorophyll *a* and cause an exceedance of the TCEQ Chlorophyll *a* criterion sooner. The proposed effluent limits for total phosphorus on wastewater discharges to the Benbrook Lake Watershed should lessen the predicted increase of the upward trend in Chlorophyll *a*.

TRWD has modeled the watershed of two of its reservoirs, Eagle Mountain and Cedar Creek, with the Soil and Water Analysis Tool ("SWAT"). These models both demonstrated that phosphorus is not attenuated indefinitely in the watershed, but rather greater than 80 percent of the phosphorus generated by point and nonpoint sources in the watershed is delivered to the reservoir. SWAT also was linked to WASP and elucidated that the reservoir responds to the cumulative load from the watershed, rather than individual loadings.

VI. TCEQ WATER QUALITY MANGEMENT INFORMATION

TCEQ's water quality management information also indicates that the Clear Fork of the Trinity River and Benbrook Lake Reservoir have existing, nutrient-related water quality issues. Even though Benbrook Lake (Segment 0830) fully supports all designated uses, TCEQ's 2008 305b Report lists a water quality concern for nutrient enrichment in the lower portion of Benbrook Lake, and for algae growth throughout the reservoir. The

Draft 2010 305b Report also indicates water quality problems related to elevated nutrients. For evaluation purposes, the TCEQ has divided Benbrook Lake into four zones: the Rock/Mustang Creek Arm, the Upper Portion, the Middle Portion, and the Lower Portion. All four zones are listed as having concerns for elevated levels of Chlorophyll *a*. Further, the Clear Fork Trinity River below Lake Weatherford, the major tributary to Benbrook Lake, is listed as having total phosphorus and ortho-phosphorus concerns (lower 12.75 miles downstream from South Fork Trinity River confluence) and depressed dissolved oxygen levels (2 miles upstream of South Fork Trinity River confluence to Squaw Creek, and from the Squaw Creek confluence to Lake Weatherford Dam).

One reach of the Clear Fork of the Trinity River has been determined to not support the aquatic life use because of depressed dissolved oxygen levels. The 305b Report lists water quality concerns regarding Benbrook Lake based on elevated nutrient concentrations. One is a screening level concern for Chlorophyll *a* in lower, middle and upper portion of Benbrook Lake Reservoir, Rock/Mustang Creek arm. (DRAFT 2010 Texas Water Quality Inventory: Assessment Results for Basin - Basin 8 - Trinity River (February 5, 2010)). The source is categorized as "Point Source Unknown" - DRAFT 2010 Texas Water Quality Inventory - Sources of Impairments and Concerns.

VII. PROCEDURES THAT WILL BE USED FOR DETERMINING WHETHER TO IMPOSE EFFLUENT LIMITATIONS TO CONTROL NUTRIENTS ABSENT A WATERSHED RULE

If a watershed rule is not adopted for Benbrook Lake, the determination of whether future wastewater permits and amendments will include effluent limits to address nutrient related issues will be determined according to TCEQ's general

procedures. These are found in a guidance document entitled "Procedures to Implement the Texas Surface Water Quality Standards" ("Implementation Procedures"). The most recent version of the Implementation Procedures is dated June 30, 2010. Under the Implementation Procedures, each permit is evaluated on a case-by-case basis. TRWD is concerned that the cumulative effects will not be adequately addressed using the TCEQ Implementation Procedures.

The basis of the proposed TRWD Watershed Rule is the modeling that was performed with the use of future wastewater projections and trend analysis studies that were based on 20 years of data. However, the screening process in the TCEQ Implementation Procedures involves the application of a formula to determine the percent increase in the concentration of total phosphorus in the main pool of the reservoir expected to be caused by the additional phosphorus from a single new permit or amended permit. If the total phosphorus is not calculated to increase by 10% as a result of the proposed permit or amendment, then phosphorus limits are deemed to not be needed. If the proposed permit or amendment is calculated to cause an increase of more than 10%, then the change in Chlorophyll *a* is estimated. This analysis does not appear to adequately address cumulative impacts from a number of unrelated permit applications, nor does it adequately represent the type of phosphorus in wastewater treatment plant discharges. TRWD's sampling has shown that the majority of phosphorus in wastewater discharges is dissolved and not particulate. The TCEQ formulae assume the phosphorus is particulate and settles at a specific rate. The formulae do not allow for modeling of dissolved and particulate phosphorus. Even the prediction of impacts from phosphorus from a single discharge is subject to much uncertainty. TRWD believes that in protecting

the water quality of Benbrook Lake, the proper approach is to adopt a watershed rule requiring that new or amended permits authorizing the discharge of 0.1 MGD, or greater, of municipal wastewater to waters in the Benbrook Lake Water Quality Area (and those authorizing discharges of 0.25 MGD, or greater, to the Benbrook Lake Watershed outside of the Benbrook Lake Water Quality Area) treat phosphorus to a concentration of not more than 1 mg/L.

VIII. RECOMENDATION

TRWD recommends that a rule be adopted such that new or amended permits authorizing discharges greater than, or equal to, 0.10 MGD to the Benbrook Lake Water Quality Area and for new or amended permits authorizing discharges greater than, or equal to, 0.25 MGD to the Benbrook Lake Watershed include a requirement to treat total phosphorus to a concentration of 1 mg/L. In the future, it is possible that a phosphorus effluent limitation of 0.5 mg/L will be needed to protect water quality.

TRWD believes that not including a total phosphorus limitation for wastewater treatment plant permits as specified above will result in the further deterioration of water quality in the Clear Fork of the Trinity River and Benbrook Lake.

IX. PROPOSED CHANGES TO 30 TAC, CHAPTER 311, SUBCHAPTER G

A. CHANGES TO 30 TAC §311.61

Texas Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 311	WATERSHED PROTECTION
SUBCHAPTER G	LAKES WORTH, EAGLE MOUNTAIN, BRIDGEPORT, CEDAR CREEK, BENBROOK, AND RICHLAND-CHAMBERS
RULE §311.61	**Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(9) ~~Lake~~ Benbrook Lake ~~w~~Water ~~q~~Quality ~~a~~Area--Those portions of ~~Lake~~ Benbrook Lake ~~w~~Watershed ~~within~~ from the Benbrook Lake Reservoir Dam up to five stream miles upstream of the pool level of ~~Lake~~ Benbrook Lake Segment 0830 (694.0 feet, mean sea level).

(10) ~~Lake~~ Benbrook Lake ~~w~~Watershed-- ~~Lake~~ Benbrook Lake and its tributaries ~~located between Benbrook Dam and a point 200 meters downstream from U.S. 337 in Tarrant County.~~ excluding that above Lake Weatherford Dam.

B. CHANGES TO 30 TAC §311.62

Texas Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 311	WATERSHED PROTECTION
SUBCHAPTER G	LAKES WORTH, EAGLE MOUNTAIN, BRIDGEPORT, CEDAR CREEK, BENBROOK, AND RICHLAND-CHAMBERS
RULE §311.62	**Scope**

Except for §311.67, ~~T~~these sections apply to discharges into water quality areas of Lakes Worth, Eagle Mountain, Bridgeport, Cedar Creek, Arlington, Benbrook, and Richland-Chambers ~~and discharges directly into these lakes~~. Section 311.67 applies to discharges to the Benbrook Lake Watershed and the Benbrook Lake Water Quality Area.

C. PROPOSED NEW SECTION 30 TAC §311.67

Texas Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 311	WATERSHED PROTECTION
SUBCHAPTER G	LAKES WORTH, EAGLE MOUNTAIN, BRIDGEPORT, CEDAR CREEK, BENBROOK, AND RICHLAND-CHAMBERS
RULE §311.67	**Nutrient Control**

For discharges based on new or amended permits issued after ____ with discharge points located in Benbrook Lake Watershed outside of the Benbrook Lake Water Quality Area having a monthly average discharge volume of greater than or equal to 0.25 MGD, the effluent limit for total phosphorus shall be not to exceed 1.0 mg/L. For discharges based on new or amended permits issued after ____ with discharge points located in the Benbrook Lake Water Quality Area with a monthly average discharge volume of greater

than or equal to 0.1 MGD, the effluent limit for total phosphorus shall be not to exceed 1.0 mg/L.

X. PRAYER

WHEREFORE, Petitioner respectfully prays that the Commission adopt the proposed modification of 30 TAC Chapter 311, Subchapter G to correct the descriptions of Benbrook Lake Watershed and Benbrook Lake Water Quality Area and to impose the effluent limitation as set forth above.

Respectfully Submitted,

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By: _____
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Texas Bar No. 02648500

ATTORNEYS FOR TARRANT REGIONAL WATER DISTRICT

Texas Commission on Environmental Quality

DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY BOOTH, AHRENS & WERKENTHIN ON BEHALF OF
TARRANT REGIONAL WATER DISTRICT

Docket No. 2013-0306-RUL

On March 27, 2013, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by Booth, Ahrens & Werkenthin on behalf of Tarrant Regional Water District. The petition, filed on February 6, 2013, requests that the agency initiate rulemaking to amend 30 TAC Chapter 311, Subchapter G, to revise the definitions of the Benbrook Lake Watershed and Water Quality Area and to impose a total phosphorus effluent limitation of one milligram per liter for new or amended permits authorizing discharges greater than, or equal to, 0.10 million gallons per day (MGD) to the Benbrook Lake Water Quality Area, and for new or amended permits authorizing discharges greater than or equal to 0.25 MGD to the Benbrook Lake Watershed.

IT IS THE DECISION OF THE COMMISSION pursuant to the Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code § 5.102 and § 5.103 to deny the petition for rulemaking.

The Commission determined that additional stakeholder input is necessary to insure that all issues relating to the petition are fully explored and all potentially impacted entities have an opportunity to participate. The Commission directs the Executive Director to solicit stakeholder input on all the issues raised in the petition and on any other issues that are relevant to the issues raised in the petition and take appropriate action. Furthermore, the Commission directs the Executive Director to report back to the commission within nine months unless rulemaking has been initiated following the stakeholder input.

This Decision constitutes the decision of the Commission required by Texas Government Code, § 2001.021(c).

Issued date: APR 0 1 2013

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw

Bryan W. Shaw, Ph.D., Chairman

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §311.61 and §311.62, and propose new §311.67.

Background and Summary of the Factual Basis for the Proposed Rules

On February 6, 2013, the Tarrant Regional Water District (petitioner) filed a petition for rulemaking that proposed amending §§311.61, 311.62, and adding 311.67 to correct the definitions of "Benbrook Lake watershed" and "Benbrook Lake water quality area" and to require an effluent limit of 1.0 milligram per liter (mg/L) for total phosphorus for new or amended domestic wastewater discharges to the Benbrook Lake water quality area and Benbrook Lake watershed based on discharge flow volume and location. In addition to correcting definitions, the purpose of the petitioner's requested rulemaking was to protect water quality in Benbrook Lake by limiting additional nutrient enrichment in the reservoir and the associated problems that enrichment can cause.

The petitioner provided several lines of support to justify the proposed rulemaking. The petitioner took part in a regional wastewater treatment needs study that projected increasing volumes of domestic wastewater through the year 2030 due to expected population growth in the Benbrook Lake watershed. Using a water quality simulation model, the study estimated the effluent quality requirements necessary to protect water quality in the lake. The evaluation predicted that requiring a total phosphorus effluent limit of 1.0 mg/L would prevent lake concentrations of the nutrient-loading response

variable chlorophyll-*a* from increasing significantly beyond the TCEQ-proposed chlorophyll-*a* criterion for Benbrook Lake.

The petitioner also sponsored a study of trends in the water quality data collected from Benbrook Lake. The study found significant increasing trends in concentrations of chlorophyll-*a*, total phosphorus, and total nitrogen in the lake. It is expected that the proposed effluent limit for total phosphorus would lessen the upward trend of lake chlorophyll-*a* concentrations. The petitioner also noted that the TCEQ Texas Water Quality Integrated Report has reported chrorophyll-*a* or excessive algal growth concerns in Benbrook Lake in all biennial report years dating back to 2002. Furthermore, the petitioner used a soil and water analysis model of the watersheds of two of its other system reservoirs to demonstrate that most (over 80%) of the phosphorus generated by point and nonpoint sources in the watersheds is delivered to the reservoirs, indicating the potential effectiveness of phosphorus control for additional wastewater loading to the lake. The model results were also linked to the water quality simulation tool and showed that the reservoirs were most sensitive to cumulative loads as opposed to individual loadings.

The petitioner lastly reviewed TCEQ's procedures for evaluating on a permit-by-permit basis the need for phosphorus effluent limits. The petitioner indicated that the TCEQ procedures do not adequately take into account water quality trends, anticipated future

wastewater loading, and cumulative impacts from other wastewater discharges. In addition, the evaluation of individual discharges using TCEQ procedures in certain cases may not result in the recommendation of total phosphorus effluent limits for the targeted new or increasing discharges of 0.1 million gallons per day (MGD) or greater in the Benbrook Lake water quality area and 0.25 MGD or greater in the Benbrook Lake watershed.

The TCEQ has reviewed the above information provided by the petitioner and agrees that the proposed rulemaking would be an effective approach to further protect water quality in Benbrook Lake.

Section by Section Discussion

§311.61, Definitions

The commission proposes to amend the reference to "Lake Benbrook" to correctly reflect the reservoir's proper name, Benbrook Lake. To incorporate this change, the terms "Lake Benbrook water quality area" and "Lake Benbrook watershed" are renamed "Benbrook Lake water quality area" and "Benbrook Lake watershed," respectively. This proposed change also creates a change in the alphabetical order and numeric sequencing of paragraphs (2) - (10). The water quality area definition contains two references to "Lake Benbrook" that are changed to "Benbrook Lake." The one reference to "Lake Benbrook" in the watershed definition is changed to "Benbrook Lake," and the

upper watershed boundary is changed from "a point 200 meters downstream from U.S. 337 in Tarrant County" to "Lake Weatherford Dam." U.S. 337 is a nonexistent highway, and if U.S. Highway 377 was the intended reference, the resulting watershed area would be smaller than the water quality area, which is inconsistent with the relationship between the watersheds and water quality areas of the other reservoirs included in Subchapter G. The dam of the reservoir upstream of Benbrook Lake, Lake Weatherford, is the correct upper boundary of the Benbrook Lake watershed.

§311.62, Scope

The commission proposes to amend §311.62 to accommodate the addition of §311.67, Nutrient Control, which institutes a total phosphorus limit for certain discharges into the Benbrook Lake water quality area and watershed. The original scope of the subchapter focused only on discharges to reservoir water quality areas, so an exception was added for §311.67. The phrase "and discharges directly into these lakes" is removed from the original scope statement because it is unnecessary. The definition of each of the other reservoir water quality areas includes the reservoir itself. An additional sentence is added to §311.62 to indicate that §311.61 and §311.66, More Stringent Requirements, also apply to discharges to the Benbrook Lake watershed. A clarifying statement is added to the end of §311.62 that limits the scope of §311.67 only to discharges into the Benbrook water quality area and watershed.

§311.67, Nutrient Control

The commission proposes new §311.67. Proposed subsection (a) requires a daily average effluent limit for total phosphorus of 1.0 mg/L for domestic wastewater discharges, from treatment systems other than oxidation pond systems, into either the Benbrook Lake watershed or water quality area. Discharges into the Benbrook Lake watershed with a permitted flow less than 0.25 MGD and discharges into the Benbrook Lake water quality area with a permitted flow less than 0.10 MGD are exempt from the effluent limit requirement. Proposed subsection (b) stipulates that for discharge permits with multiple flow phases, the requirements of subsection (a) apply only to qualifying flow phases. Proposed subsection (c) further clarifies that for permits with more than one discharge outfall, the permitted flow for all the outfalls would be combined to determine if the permit meets the flow criteria of subsection (a). Proposed subsection (d) further limits the applicability of subsection (a) to new discharge permits and existing permits that increase the permitted flow of the discharge.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules. However, the proposed rules could result in additional costs which

may be significant, for those for new or amended discharge permits within the Benbrook Lake Water Quality Area with a permitted annual or daily average flow greater than or equal to 0.10 MGD, or for new or amended discharge permits within the Benbrook Lake Watershed, but outside the Benbrook Lake Water Quality Area, with a permitted annual or daily average flow greater than or equal to 0.25 MGD.

The proposed rules would require an effluent limit of 1.0 mg/L for total phosphorus for new or amended domestic wastewater discharges to the Benbrook Lake water quality area and Benbrook Lake watershed based on discharge flow volume and location. The proposed rules are intended to protect water quality in Benbrook Lake by limiting additional nutrient enrichment in the reservoir and the associated problems that enrichment can cause.

The proposed rules will affect newly constructed wastewater treatment plants or existing wastewater treatment plants that are expanded and either: 1) discharge a volume greater than or equal to 0.10 MGD in the Benbrook Lake water quality area (the reservoir and any tributaries within five miles of the lake's conservation pool), or 2) discharge a volume greater than or equal to 0.25 MGD in the Benbrook Lake watershed (tributaries outside of the water quality area and downstream of Lake Weatherford Dam). Currently, the area to which the proposed rules would apply contains seven domestic wastewater dischargers. Of those seven dischargers, two are located within the

Benbrook Lake Water Quality Area (within five miles of the reservoir normal pool elevation), and the remaining five dischargers are within the Benbrook Lake Watershed (outside the Water Quality Area and below the upstream Lake Weatherford dam). One of these dischargers already has a 1.0 mg/L total phosphorus permit effluent limitation and therefore is not expected to be affected by the proposed rules. The remaining six dischargers will be affected if they have to expand or build new facilities based on growth projections in the area. If either of these scenarios occur, they can expect additional costs to meet the total phosphorus limits. A 2007 regional wastewater planning study commissioned by the Tarrant Regional Water District (petitioner for the rule change) and several area cities, entitled "Eastern Parker County Regional Wastewater Facilities Plan", projects an increase in the amount of wastewater discharges in this area of approximately 2.3 MGD by the year 2020 and 5.0 MGD by 2030.

Of the six potentially affected dischargers, two are owned by cities (Willow Park and Weatherford). If these two dischargers expand or build new wastewater treatment facilities, they are likely to experience additional costs. Based upon a technical support document prepared for the Ohio Environmental Protection Agency by Tetra Tech in May, 2013, entitled "A Cost Estimate of Phosphorus Removal At Wastewater Treatment Plants", it is estimated that for levels stipulated in the proposed rule, capital costs could run between $0.59 to $2.95 per gallon of additional treatment capacity and between

$240 and $648 per million gallons treated for operation and maintenance (O&M) costs. These average costs would depend upon the degree of treatment and technology chosen. The cost estimates in the study are based on the additional costs for a new facility to treat for phosphorus, which seems to be the most likely scenario, according to the study.

For the purposes of this fiscal note, it is roughly estimated that affected dischargers in the Benbrook Lake water quality and watershed areas could expect to pay an estimated $2.60 per gallon of treatment capacity in capital costs and $391 per million gallons treated in O&M costs to achieve the level of treatment contemplated in the rule proposal. Assuming there are an additional 2.3 MGD that need to be treated, then additional one-time capital costs would be estimated at approximately $6 million (2.3 x $2.60) with annual O&M costs of $328,245 ($391/MG x 2.3/MGD) x 365). It could also be assumed that additional costs to the cities would be made up for by an increase in rates assessed to wastewater utility customers.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be enhanced protection of the public health and safety through the reduction of phosphorus in Benbrook Lake thereby preserving the lake for recreation, the support of aquatic life, and public drinking water.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals unless affected wastewater treatment facilities increase their discharge flow volume to meet the proposed limits by expanding their current treatment facilities or building new ones. Under these circumstances, the owner and operators of these facilities would be subject to the proposed phosphorus limits and would incur higher treatment costs. Those costs could translate into higher sewer utility rates for customers. Of the six potentially affected dischargers, four are privately owned. If these dischargers build new wastewater treatment facilities to levels stipulated in the proposed rule, they are likely to experience additional costs estimated to be between $0.59 to $2.95 per gallon of additional treatment capacity in one-time capital costs and between $240 and $648 per million gallons treated for O&M costs. These average costs would depend upon the degree of treatment and technology chosen. For the purposes of this fiscal note, it is roughly estimated that affected dischargers in the Benbrook Lake water quality and watershed areas could expect to pay an estimated $2.60 per gallon of treatment capacity in capital costs and $391 per million gallons treated in O&M costs to achieve the level of treatment contemplated in the rule proposal. Assuming there are an additional 2.3 MGD that need to be treated, then additional one-time capital costs would be estimated at approximately $6 million (2.3 x $2.60) with annual O&M costs of $328,245 ($391/MG x 2.3/MGD) x 365). It could also be assumed that additional costs to the businesses would be made up for by an increase in rates assessed to wastewater

utility customers.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules will affect wastewater utilities that are small or micro-businesses that treat wastewater and discharge in the Benbrook Lake water quality area and Benbrook Lake watershed. If any of these dischargers expand their current treatment facilities or build new ones and increase their discharge flow volume to amounts that require the dischargers to meet the proposed limits stipulated in the proposed rule, then these owners and operators could incur higher phosphorus treatment costs, which could translate into higher sewer rates for customers. All of the four privately owned dischargers could be small or micro-businesses. Due to a projected increase in population, a 2007 regional wastewater planning study projected an increase in wastewater discharges of approximately 2.3 MGD by 2020 and 5.0 MGD by 2030. Assuming there are an additional 2.3 MGD that need to be treated, then additional one-time capital costs would be estimated at approximately $6 million (2.3 x $2.60) with annual O&M costs of $328,245 (($391/MG x 2.3/MGD) x 365). Any additional costs to these facilities to expand their operations would be made up for by an increase in rates assessed to wastewater utility customers.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way and are necessary to protect the public health, safety, and environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the

state or a sector of the state. The intent of the rulemaking is to establish a phosphorus limit for discharge permits when the permittee is discharging into the Benbrook Lake watershed or Benbrook Lake water quality area, depending on the permit's flow volume limit. The specific intent of the proposed rulemaking is to amend the commission's rules to establish a phosphorus limit that does protect the environment and reduces risks to human health from environmental exposure but that will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not meet the definition of a "major environmental rule."

Even if the proposed rulemaking was a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed a standard set

by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather specifically under Texas Water Code (TWC), §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed in the state; TWC, §26.027, which authorizes the commission to issue permits; and TWC, §26.121, which authorizes the commission to prohibit unauthorized discharges. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to establish a phosphorus limit that would apply to wastewater discharges into the Benbrook Lake watershed and water quality area. The

proposed rulemaking would substantially advance this stated purpose by adding a daily average phosphorus limit of 1 mg/L that would only apply to discharges into the Benbrook Lake watershed and water quality area to Chapter 311, Subchapter G of the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The commission has been delegated as the regulatory agency that administers the state National Pollutant Discharge Elimination System program under the federal Clean Water Act, §402 and, therefore, is responsible for establishing effluent limitations to protect water quality in a specific portion of a navigable water to protect public health, public water supplies, agricultural and industrial uses, wildlife, and recreational activities under the federal Clean Water Act, §302.

Nevertheless, the commission further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in

private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, this rulemaking requires compliance with a phosphorus effluent limitation related to discharges into the Benbrook Lake watershed and water quality area without burdening nor restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 24, 2014, at 10:00 a.m. in Building E, Room 201S at the commission's central office, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called

upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-006-311-OW. The comment period closes August 4, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Gregg Easley, Water Quality Division, at (512) 239-4539.

SUBCHAPTER G: LAKES WORTH, EAGLE MOUNTAIN, BRIDGEPORT, CEDAR CREEK, ARLINGTON, BENBROOK AND RICHLAND-CHAMBERS §§311.61, 311.62, 311.67

Statutory Authority

This rulemaking is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources; TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.023, which authorizes the commission to set water quality standards for water in the state by rule; TWC, §26.027, which authorizes the commission to issue permits; and TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed rulemaking implements TWC, §§26.0135, 26.023, 26.027, and 26.121.

§311.61. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) BOD_5--Biochemical oxygen demand (five-day).

(2) Benbrook Lake water quality area--Those portions of the Benbrook Lake watershed within five stream miles upstream of the pool level of Benbrook Lake (694.0 feet, mean sea level).

(3) Benbrook Lake watershed--Benbrook Lake and its tributaries, located between Benbrook Dam and Lake Weatherford Dam.

(4) [(2)] Cedar Creek reservoir water quality area--Those portions of the Cedar Creek Reservoir watershed within five stream miles upstream of the pool level of Cedar Creek Reservoir (322.0 feet, mean sea level).

(5) [(3)] Cedar Creek Reservoir watershed--Cedar Creek Reservoir and its tributaries located between Joe B. Hoggsett Dam and a point along Cedar Creek up to the normal pool elevation.

(6) [(4)] DO--Dissolved oxygen.

(7) [(5)] Eagle Mountain Lake water quality area--Those portions of the Eagle Mountain Lake watershed within five stream miles upstream of the pool level of Eagle Mountain Lake (649.1 feet, mean sea level).

(8) [(6)] Eagle Mountain Lake watershed--Eagle Mountain Lake and its tributaries located between Eagle Mountain Dam and a point 0.6 kilometers downstream from the confluence of Oates Branch.

(9) [(7)] Lake Arlington water quality area--Those portions of the Lake Arlington watershed within five stream miles upstream of the pool level of Lake Arlington (550.0 feet, mean sea level).

(10) [(8)] Lake Arlington watershed--Lake Arlington and its tributaries located between Arlington Dam up to the normal pool elevation along Village Creek.

[(9) Lake Benbrook water quality area--Those portions of the Lake Benbrook watershed within five stream miles upstream of the pool level of Lake Benbrook (694.0 feet, mean sea level).]

[(10) Lake Benbrook watershed--Lake Benbrook and its tributaries located between Benbrook Dam and a point 200 meters downstream from U.S. 337 in Tarrant County.]

(11) Lake Bridgeport water quality area--Those portions of the Lake Bridgeport watershed within five steam miles upstream of the pool level of Lake Bridgeport (836.0 feet, mean sea level).

(12) Lake Bridgeport watershed--Lake Bridgeport and its tributaries located between Bridgeport Dam to a point immediately upstream from the confluence of Bear Hollow.

(13) Lake Worth water quality area--Those portions of the Lake Worth watershed within five stream miles upstream of the pool level of Lake Worth (594.3 feet, mean sea level).

(14) Lake Worth watershed--Lake Worth and its tributaries located between Lake Worth Dam and a point 4.0 kilometers downstream from Eagle Mountain Dam.

(15) Mg/liter--Milligram per liter.

(16) Oxidation pond system--Facility in which oxidation ponds are the primary process used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria.

(17) Richland-Chambers reservoir water quality area--Those portions of the Richland-Chambers Reservoir watershed within five stream miles upstream of the pool level of Richland-Chambers Reservoir (315.0 feet, mean sea level).

(18) Richland-Chambers watershed--Richland-Chambers Reservoir and its tributaries located between Richland Creek Dam and a point along Richland Creek up to the normal pool level.

(19) TSS--Total suspended solids.

§311.62. Scope.

Except for §311.67 of this title (relating to Nutrient Control), this subchapter applies [These sections apply] to discharges into the water quality areas of Lakes Worth, Eagle Mountain, Bridgeport, Cedar Creek, Arlington, Benbrook, and Richland-Chambers [and discharges directly into these lakes]. Section 311.61 and §311.66 of this

title (relating to Definitions; and More Stringent Requirements, respectively) also apply to the Benbrook Lake watershed. Section 311.67 of this title only applies to discharges to the Benbrook Lake watershed and Benbrook Lake water quality area.

§311.67. Nutrient Control.

(a) Domestic wastewater discharges from wastewater treatment systems, other than oxidation pond systems, must meet a daily effluent limit for total phosphorus of 1.0 milligram per liter, based on a 30-day average, if the wastewater treatment system:

(1) has a permitted annual or daily average flow greater than or equal to 0.10 million gallons per day and a discharge point located in the Benbrook Lake water quality area; or

(2) has a permitted annual or daily average flow greater than or equal to 0.25 million gallons per day and a discharge point located in the Benbrook Lake watershed, but outside the Benbrook Lake water quality area.

(b) For discharge permits with more than one flow phase, the effluent limit requirements in subsection (a) of this section apply only to those flow phases that meet the flow requirements in subsection (a) of this section.

(c) For wastewater treatment systems with more than one outfall, the permitted flow limits for all outfalls will be combined to determine if the system meets one of the flow requirements in subsection (a) of this section.

(d) This section only applies to wastewater treatment systems that apply for a new discharge permit or a discharge permit amendment to increase permitted flow after January 1, 2015.