

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Adoption

**AGENDA REQUESTED:** June 26, 2019

**DATE OF REQUEST:** June 7, 2019

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Kris Hogan, (512) 239-6812

**CAPTION: Docket No. 2019-0095-MIS.** Consideration of the adoption of the First Submission of the Draft 2018 Texas Integrated Report, for the federal Clean Water Act Sections 303(d) and 305(b) – Spring Creek (Segment 1008), which is a compilation of documents and information which provides an overview of the surface water quality of Spring Creek (Segment 1008).

The First Submission of the Draft 2018 Texas Integrated Report would inform the regulated community and the public of water quality status of Spring Creek (Segment 1008). The First Submission of the Draft 2018 Texas Integrated Report would also provide agencies with information to enable informed permitting decisions, resource allocations, and to determine where total maximum daily loads, watershed action plans, and other water quality improvement efforts are needed. The proposed First Submission of the Draft 2018 Texas Integrated Report – Spring Creek (Segment 1008) Notice was published in the March 22, 2019, issue of the *Texas Register* (44 TexReg 1544). The proposed First Submission of the Draft 2018 Texas Integrated Report – Spring Creek (Segment 1008) was posted on the commission's Water Quality Planning Division's website on March 22, 2019. (Andrew Sullivan, Michael Parr) (Non-Rule Project Number 2019-080-OTH-NR)

L'Oreal W. Stepney, P.E.  
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# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

Date: June 7, 2019

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

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

**Docket No.:** 2019-0095-MIS

**Subject:** Commission Approval for Adoption  
The Draft 2018 Texas Integrated Report of Surface Water Quality (First Submission – Spring Creek (Segment 1008))  
Non-Rule Project No. 2019-080-OTH-NR

### **Summary and background:**

The Integrated Report (IR) is a compilation of documents and information that provides an overview of the state's surface water quality. Factors considered in evaluating the status of water bodies include concerns for public health, viability for use by aquatic species and other wildlife, and identification of elevated levels of specific pollutants and their potential sources. The IR includes a list of water bodies that do not support their water quality uses. This list is known as the Texas 303(d) List. The IR also includes the *Guidance for Assessing and Reporting Surface Water Quality in Texas*, assessment data, additional water quality status reporting, and supporting documents. Requirements for the IR are codified in the federal Clean Water Act (CWA), §303(d) and §305(b), and in the Texas Water Code (TWC), §26.0135.

Revised site-specific dissolved oxygen criteria for Spring Creek were adopted in the 2018 *Texas Surface Water Quality Standards* on February 7, 2018 and were approved by the United States Environmental Protection Agency (EPA) on November 2, 2018. However, because Spring Creek's site-specific dissolved oxygen criteria were not approved by EPA before the 2016 IR was completed, the Texas Commission on Environmental Quality (TCEQ, agency, or commission) is developing the first submission of the 2018 IR to submit to EPA which will only include the assessment of Spring Creek. The remainder of the water bodies for the 2018 IR are currently being assessed. This assessment will be included as a second submission of the 2018 IR that will be developed later this year.

Portions of the IR proposed for consideration by the commission include the following:

- Draft 2018 Texas 303(d) List (Spring Creek)
- Draft 2018 Delisting (Spring Creek)
- Draft 2018 Public Comment and Response (Spring Creek)

### **Scope:**

Geographic information, monitoring data, and supporting documentation were compiled to determine if Spring Creek was meeting water quality standards or impaired. Water quality concerns are reported for water bodies that are near non-attainment or not meeting established screening levels or water quality standards. The first submission of

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the 2018 IR includes the assessment results for Spring Creek. The assessment resulted in the proposed delisting of Spring Creek for dissolved oxygen. Spring Creek continues to have an impairment for bacteria, and concerns for its fish community, nitrate, and total phosphorus. The first submission of the 2018 IR fulfills the requirements of the federal CWA, §303(d) and §305(b).

**A.) Summary of what the Integrated Report will do:**

The IR assigns each assessed water body to one of five categories. For each water body assessed, the categories indicate the water quality status and how the state will address water quality issues. The categories provide information to the public, stakeholders, internal agency programs, and the EPA, about the State's water quality management activities. Water bodies included in Category 5 constitute the Texas 303(d) List.

**B.) Scope required by federal regulations or state statutes:**

Requirements for the IR are codified in the federal CWA, §303(d) and §305(b), and in the TWC, §26.0135. Administrative regulatory requirements are established in 40 Code of Federal Regulations (CFR) §130.7 and in 30 Texas Administrative Code (TAC) Chapter 307. Additional procedural guidance is established by the TCEQ.

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

The IR includes supporting documentation useful to programs that administer the state's water quality management programs as well as to the public and stakeholders.

**Statutory authority:**

Requirements for the IR are codified in the federal CWA, §303(d) and §305(b), and in the TWC, §26.0135. Administrative regulatory requirements are established in 40 CFR §130.7 and in 30 TAC Chapter 307. Additional procedural guidance is established by the TCEQ.

**Effect on the:**

**A.) Regulated community:**

The IR informs the regulated community of water quality status. Non-support of designated uses for surface water may affect discharge permits and other regulated activities that could affect impaired water bodies. Conversely, appropriate removal of water bodies from the Texas 303(d) List can avoid unnecessary regulatory impacts.

**B.) Public:**

The IR serves all stakeholders by providing information regarding the quality of surface waters locally and throughout the state of Texas. Protection of surface waters through the IR process serves to protect human health and the aquatic environment for the state.

**C.) Agency programs:**

The IR provides information to enable informed permitting decisions and resource allocations, and to determine where total maximum daily loads, watershed protection plans, and other water quality improvement efforts are needed. Grant funding under federal CWA, §319(h) is prioritized for water bodies identified as impaired.

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**Stakeholder involvement:**

Biennially, an external advisory workgroup is convened to discuss proposed changes to the *Guidance for Assessing and Reporting Surface Water Quality in Texas*. The workgroup comprises representatives from state agencies, municipalities, industry, environmental groups, and river authorities. For the draft 2018 IR, the TCEQ convened a meeting with the external advisory workgroup on August 24, 2018 to review the assessment procedures that would be used to evaluate monitoring data.

Other stakeholder involvement includes a preliminary review of assessment results by data providers, such as the TCEQ Regional Offices, river authorities, and USGS. From January 15, 2019 to January 25, 2019, data providers previewed the preliminary assessment results for Spring Creek and provided additional comments.

The Watershed Action Planning (WAP) process involves state agencies, river authorities, and other stakeholders in the IR process through review of assessment outcomes and category assignment. Strategies for addressing water quality impairments are developed through WAP proceedings.

**EPA review:**

The EPA reviews the draft assessment results upon release for public comment and reviews the final draft IR adopted by the commission under the provisions of the federal CWA. The Texas 303(d) List is only considered final upon approval by the EPA.

**Public comment:**

A 30-day public comment period occurred March 22, 2019 through April 22, 2019. The agency received one formal comment during the comment period from the Texas Parks and Wildlife Department.

**Significant changes:**

Public comments resulted in no changes to the IR.

**Potential controversial concerns and legislative interest:**

The TCEQ is not aware of any potential controversial concerns or legislative interest.

**Does this Integrated Report affect any current policies or require development of new policies?**

No.

**What are the consequences if this Integrated Report does not go forward? Are there alternatives?**

States are required to submit the IR by April 1 of even-numbered years. The TCEQ receives federal funds from EPA to assess water bodies and develop the IR. Loss of funding is a potential consequence of not proceeding with the IR. If the TCEQ does not submit the IR, EPA has the authority to develop the IR and promulgate the 303(d) List of Impaired Waters. Stakeholders rely on the information contained in the IR when planning

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activities to address water quality. Delays in approval of the IR impact the ability of stakeholders to have the most recent information and make informed decisions when planning water quality management activities.

**Key points in the schedule:**

**Texas Register Public Notice publication date:** March 22, 2019

**Draft Proposal publication date (on TCEQ Water Quality Planning Division Web page):** March 22, 2019

**Public Comment period:** March 22, 2019 - April 22, 2019

**Anticipated adoption date:** June 26, 2019

**Anticipated submittal to EPA:** July 2019

**Agency contacts:**

Andrew Sullivan, Project Manager, Water Quality Planning Division, (512) 239-4587

Michael Parr, Staff Attorney, (512) 239-0611

Kris Hogan, Texas Register Coordinator, (512) 239-6812

**Attachments**

Draft 2018 Texas 303(d) List

Draft 2018 Delisting (Spring Creek)

Draft 2018 Public Comment and Response (Spring Creek)

cc: Chief Clerk, 7 copies

## **First Submission of the Draft 2018 Texas Integrated Report – Texas 303(d) List (Category 5)**

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As required under Sections 303(d) and 305(b) of the federal Clean Water Act, each State shall identify water bodies in or bordering Texas for which effluent limitations are not stringent enough to implement one or more water quality standards, and for which the associated pollutants are suitable for measurement by total maximum daily load.

Revised site-specific dissolved oxygen criteria for Spring Creek were adopted in the 2018 Texas Surface Water Quality Standards on February 7, 2018 and were approved by the United States Environmental Protection Agency (EPA) on November 2, 2018. However, because Spring Creek's site-specific dissolved oxygen criteria were not approved by EPA before the 2016 Texas Integrated Report was completed, the TCEQ is preparing the First Submission of the Draft 2018 Texas Integrated Report which only includes the assessment of Spring Creek.

**The 2018 assessment of Spring Creek resulted in no new impairments and a delisting for dissolved oxygen; therefore, the first submission of the Draft 2018 Texas 303(d) List does not include Spring Creek. No other water bodies were included on the first submission of the Texas 303(d) List, since the First Submission of the Draft 2018 Texas Integrated Report only included the assessment of Spring Creek.**

The remainder of the water bodies assessed for the Draft 2018 Texas Integrated Report, including a Texas 303(d) List that identifies impairments of those water bodies assessed, will be provided in the second submission of the report.

# First Submission of the Draft 2018 Texas Integrated Report - Water Bodies and Parameters Removed from the 303(d) List

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## Explanation of Column Headings

**SegID and Name:** The unique identifier (SegID), segment name, and location of the water body. Items may be one of three types of numbers for SegID. The first type is a classified segment number (4 digits, e.g. 0218), as defined in the Texas Surface Water Quality Standards (TSWQS). The second type is an unclassified water body (e.g. 0218A), not defined in the Standards and associated with a classified water body because it is in the same watershed. The third type includes special Segments for Oyster Water Use (e.g. 2421OW) and Beach Watch Use (e.g. 2481CB) special areas. The segment name and description follow SegID.

**Area:** Identifies the assessment unit (AU\_ID, six or seven digits, e.g., 0101A\_01) and describes the location of the specific area within a classified or unclassified water body for which one or more water quality standards are not met.

**Parameter(s):** Pollutants or water quality conditions that assessment procedures had previously indicated did not meet assigned water quality standards.

**Reason Code:** A code which describes the general reason water bodies or parameters were removed from the 2016 303(d) List. Not all reasons codes are utilized.

**ERROR:** Error in the basis for the original listing.

**EXPMEET:** Expected to meet water quality standards in the near future. This impairment has been moved to Category 4b.

**MEETS:** The most recent set of data demonstrates that water quality standards are now met and water quality meets the requirements for delisting.

**NEWSTD:** Meets the revised water quality standard.

**REVPROC:** In the absence of recent data, the original data set for this water body has been re-assessed with more valid procedures and the applicable water quality standards are met.

**POLLUTION:** This impairment is not caused by a pollutant load that can be allocated and controlled with a TMDL, or a naturally occurring condition prevents the attainment of water quality standards. This impairment has been moved to Category 4c.

**SEGCHG:** The water body ID has changed because of a correction or new segment.

**TMDL:** A TMDL has been developed by TCEQ and approved by EPA for this parameter. This impairment has been moved to Category 4a.

**Type Delist:** This signifies the impairment status of the assessment unit by the descriptions, as follows:

**Area:** Indicates this parameter is removed from this AU\_ID only and is still impaired (Category 5) in another AU\_ID in the same segment.

**Parameter:** Indicates this parameter is removed from this AU\_ID and no other AU\_IDs are still impaired (Category 5) for this parameter in this segment.

**Complete:** Indicates there are no other impairments in Category 5 of any parameter or AU\_ID in this segment.

## Parameter Category

**Previous :** One of three subcategories assigned to each impaired parameter to provide information about water quality status and management activities on that water body. The categories are defined below:

**Category 5:** The water body does not meet applicable water quality standards for one or more designated uses by one or more pollutants.

*Category 5a* - TMDLs are underway, scheduled, or will be scheduled for one or more parameters.

*Category 5b* - A review of the standards for one or more parameters will be conducted before a management strategy is selected, including the possible revision to the TSWQS.

*Category 5c* - Additional data or information will be collected and/or evaluated for one or more parameters before a management strategy is selected.

**Current:** If this is blank, the parameter is no longer impaired in the reported area(s) for the reason listed. Otherwise, some impairments were changed to Category 4 and are no longer on the 303(d) list, but still considered impaired.

**Category 4:** Standard is not supported for one or more designated uses but does not require the development of a TMDL.

*Category 4a* - All TMDLs have been completed and approved by EPA.

*Category 4b* - Other control requirements are reasonably expected to result in the attainment of all standards.

*Category 4c* - Nonattainment is shown to be **caused by pollution**, not by pollutants and that the water quality conditions cannot be changed by the allocation and control of pollutants through the TMDL process.

**SegID: 1008**

**Spring Creek**

From the confluence with the West Fork of the San Jacinto River in Harris/Montgomery County to the confluence with Kickapoo Creek in Harris/Waller County

<i>Parameters</i>	<i>Area</i>	<i>Reason Code</i>	<i>Type Delist</i>	<i>Impairment Category</i>		<i>Additional Information</i>
				<i>Previous</i>	<i>Current</i>	
<b>depressed dissolved oxygen</b>						
1008_02	Kickapoo Creek confluence to SH 249	MEETS	Parameter	5c		Meets criteria



# First Submission of the Draft 2018 Texas Integrated Report - Response to Public Comment

## Texas Commission on Environmental Quality (TCEQ)

These comments address the TCEQ's First Submission of the Draft 2018 Texas Integrated Report for Clean Water Act Sections 305(b) and 303(d) List and were submitted during the comment period beginning March 22, 2019 and ending April 22, 2019.

**COMMENTOR: Texas Parks and Wildlife Department**

<u>Segment ID</u>	<u>Water Body Name</u>	<u>Summary of Request or Comment</u>	<u>Summary of Action or Explanation</u>
NA	NA	<p>Texas Parks and Wildlife Department (TPWD) commented that insufficient time was provided for review of the <i>Draft 2018 Guidance for Assessing and Reporting Surface Water Quality in Texas (Draft 2018 Guidance)</i>. TPWD also commented that there was insufficient coordination related to changes to the <i>Draft 2018 Guidance</i> after the Guidance Advisory Work Group Meeting held on August 24, 2018. TPWD commented that it is unclear how public comment can be incorporated into the IR because the IR was completed, and data provider input was already submitted. Lastly, TPWD commented that a summary highlighting changes to the guidance would have been helpful and requests that TCEQ produce a summary document to accompany future revisions to guidance to show changes that have been made.</p>	<p><i>The Draft 2018 Guidance</i> document was made publicly available on the TCEQ's website for review and comment during the public comment period for the <i>Draft 2018 Texas Integrated Report for Surface Water Quality – Spring Creek (Segment 1008)</i> (first submission of Draft 2018 IR). A 30-day public comment period was provided for both the Draft 2018 Guidance document and the <i>Draft 2018 Texas Integrated Report for Surface Water Quality – Spring Creek (Segment 1008)</i> (first submission of Draft 2018 IR). Information regarding the public comment period for both the first submission of the Draft 2018 IR and <i>Draft 2018 Guidance</i> document was provided on the TCEQ's website. Only one comment, from TPWD, was received during the public comment period.</p> <p>The TCEQ plans to make the <i>Draft 2018 Guidance</i> document available for review and public comment, along with the 30-day public comment period for the <i>Draft 2018 Texas Integrated Report for Surface Water Quality</i> (second submission of Draft 2018 IR). The TCEQ will review and consider all comments received during the public comment period, and make any changes to the IR, as appropriate, in response to the comments received.</p> <p>The TCEQ will consider options for documenting changes to the <i>Guidance for Assessing and Reporting Surface Water Quality in Texas</i> document in the future.</p>

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## First Submission of the Draft 2018 Texas Integrated Report - Response to Public Comment

**COMMENTOR:** Texas Parks and Wildlife Department

<u>Segment ID</u>	<u>Water Body Name</u>	<u>Summary of Request or Comment</u>	<u>Summary of Action or Explanation</u>
1008	Spring Creek	<p>The following comments were made about the first submission of the Draft 2018 IR:</p> <ul style="list-style-type: none"><li>• TPWD raised questions and concerns about releasing an IR assessment on a single waterbody in advance of a full assessment, noting that this has never happened before to the best of their knowledge. TPWD raised a concern about the precedent this would create for future IRs. They stated that they were unclear on why the water quality standards change for Spring Creek resulted in a standalone IR being completed for this water body.</li><li>• TPWD commented that the Guidance Advisory Work Group (GAWG) should have been provided an opportunity for input when the decision to complete the first submission of the Draft 2018 IR was being made.</li><li>• TPWD commented that the period of record for the Draft 2018 IR is December 1, 2009 through November 30, 2016, that the Draft Guidance requires a threshold of 10 samples for data used in the 2018 IR, and that only eight samples were obtained during the period of record for the 24-hour dissolved oxygen assessment. Additionally, TPWD commented that it appeared from its review of the data set used for Spring Creek, that three additional 24-hour DO samples (March, May, and June of 2017) were added to the data set and that all the samples were beyond the period of record.</li></ul> <p>TPWD commented that the language of the <i>Draft 2018 Guidance</i> (p. 2-10) allows for the use of data from three years before the assessment period (November 30, 2006-December 30, 2009), and that TCEQ should have used data from before the assessment period if possible, rather than after the assessment period.</p> <p>TPWD commented that a clear, known end date exists, in part, to ensure all data providers have a known deadline by which to provide data for analyses in the IR. Additionally, TPWD commented that if data collected after the period of record for one water body is used, it seems other data providers should have the opportunity to provide more recent data. It may be that more recent data was available from other entities for Spring Creek. TPWD commented that it recommends that in the future, the date range for data use in the IR as spelled out in the Guidance be followed and, if deviated from, that all stakeholders are notified and have an opportunity to weigh in on the process or provide additional data.</p>	<p>The two separate submissions of the 2018 IR is an unusual case due to the timing of the EPA approval of the standards change for Spring Creek. The second submission of the 2018 IR is anticipated to be in the fall. The TCEQ looks forward to continuing to work with TPWD in the future.</p> <p>No 24-hour dissolved oxygen data from December 1, 2006 through November 30, 2009 were available for use in the assessment. TCEQ used data after the standard period of record to maximize the use of data. As per <i>Draft 2018 Guidance</i>, at least half of the samples fell within the period of record. There were no exceedances within the standard period of record and additionally, no exceedances for the three data points collected after November 30, 2016. Since this dataset included no exceedances of the criteria it would represent robust support for a delisting.</p> <p>No additional data was received during the public comment period. One comment letter, from TPWD, was received during the public comment period.</p>

# Texas Commission on Environmental Quality



## ORDER ADOPTING FIRST SUBMISSION OF THE DRAFT 2018 TEXAS INTEGRATED REPORT FOR THE FEDERAL CLEAN WATER ACT § 303(d) AND § 305(b) – SPRING CREEK (SEGMENT 1008)

Docket No. 2019-0095-MIS  
Non-Rule Project No. 2019-080-OTH-NR

On June 26, 2019, the Texas Commission on Environmental Quality (Commission) adopted the First Submission of the Draft 2018 Texas Integrated Report for the federal Clean Water Act § 303(d) and § 305(b) – Spring Creek (Segment 1008). Notice of the draft report was published for comment in the March 22, 2019, issue of the *Texas Register* (44 TexReg 1544).

IT IS THEREFORE ORDERED BY THE COMMISSION that the First Submission of the Draft 2018 Texas Integrated Report for the federal Clean Water Act § 303(d) and § 305(b) – Spring Creek (Segment 1008) is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the report necessary to comply with Texas Register requirements. The adopted First Submission of the 2018 Texas Integrated Report for the federal Clean Water Act § 303(d) and § 305(b) – Spring Creek (Segment 1008), is incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed