

Request for Stakeholder Comments regarding Rulemaking to Implement HB 1648 and 3735 SB 1430 and 864 (Water Rights).

The Texas Commission on Environmental Quality (TCEQ) hosted an informal stakeholder meeting on September 11, 2017 regarding rulemaking to implement HB 1648, HB 3735 SB 1430, HB3735, SB 864 (Water Rights).

Staff is accepting comments on any of the Bills, however, Staff intends to strictly implement the legislation as the legislature intended. Staff specifically requests input from the stakeholders on the issues outlined below.

1. How to implement SB 1430 and HB 3735 - which require the TCEQ to provide an expedited procedure for certain amendments to water rights and also requires the executive director to prioritize the technical review of those applications over applications that are not subject to the expedited process?
 - a. What should the "expedited process" look like? Is the expedited process for desalination permits in Chapter 295, Subchapter G an appropriate model?
 - b. What does "prioritize" mean? How does it harmonize (or not) with the priority system. TWC § 11.026.
 - i. Does prioritize mean to skip the line of priority? If yes,
 - ii. How should the Commission consider/model the impacts that would not occur to water rights applications, but for the expedited applications jumping to the front of the priority line?
2. The second topic of interest to Staff relates to the new mailed and published notice requirements to Groundwater Conservation Districts (GCD) and their areas required in SB 864. A strict reading of the Bill appears to only require mailed notice to a GCD and published notice in the GCD area for an application under TWC § 11.143 that uses groundwater under the jurisdiction of a GCD as an alternate source. New TWC § 11.132(d)(2)(B) also appears to require mailed notice to a GCD of a new appropriation which uses groundwater under the jurisdiction of the GCD as an alternate source to support the application. Since the Bill became effective September 1, 2017, the ED has put in place procedures to accomplish all of these notice requirements. Staff has questions about the application of these new notice requirements in other instances. Specifically:

- a. New appropriations require published notice under TWC § 11.132(d)(3). Did the Legislature intend to expand the published notice requirement to include publishing in a newspaper of general circulation in the area of the GCD (assuming they might be different than the project area in some instances)?
- b. Should the new mailed and/or published notice requirements apply to new bed and banks authorizations under TWC § 11.042(c) which use groundwater under the jurisdiction of a GCD? Current TCEQ rules, 30 TAC 295.161, requires downstream mailed notice, but does not require any published notice.

Please submit your written comments no later than September 26, 2017, to Kathy Ramirez Texas Commission on Environmental Quality, P.O. Box 13087, MC 160, Austin, Texas 78711-3087, by fax (512) 239-2214, or by email to wras@tceq.texas.gov. Please include "Rulemaking (Water Rights)" in the subject line of your mailed, faxed, or e-mailed comment letter.