

May 10, 2012

Texas Commission on Environmental Quality
Chairman Bryan Shaw and Commissioners Carlos Rubinstein and Toby Baker
MC 100
12100 Park 35 Circle
Austin, TX 78753

RE: Comments to Texas Commission on Environmental Quality (TCEQ) regarding proposed rulemaking Chapter 298, Environmental Flow Standards for Surface Water for the Guadalupe/San Antonio basin and bays

Dear Chairman Shaw and TCEQ Commissioners:

The Guadalupe, San Antonio, Mission and Aransas Rivers and Mission, Copano, Aransas and San Antonio Bays Basin and Bay Area Stakeholders Committee (GSA BBASC) offers the following comments regarding the Environmental Flows process in this basin and its impact on the resulting TCEQ Environmental Flow proposed standards.

The members of the GSA BBASC and the members of the GSA Bay and Basin Expert Science Team (BBEST) have collectively invested 18 months and thousands of hours, paid and unpaid, pouring through data, reports, presentations and participating in rigorous debates to meet the spirit and intent of the Senate Bill 3 legislation. We believe the intent of the legislature in approving this environmental flows process was to use the best available scientific information, data and stakeholder information to recommend environmental flow standards that balance the water needs of humans and the environment for the overall benefit and sustainability of the State of Texas. Although our recommendations did not achieve unanimous support, the supermajority of GSA BBASC who did support the recommendations felt that through much give-and-take by all interest groups—those advocating for the human needs and those advocating for the environmental needs—well thought-out recommendations and innovative management strategies were presented to the TCEQ for consideration.

The proposed rules released on March 9, 2012 included some of the GSA BBASC recommendations and did not include others. The most significant changes were on the instream flow recommendations on the Guadalupe River and the freshwater inflow recommendations to the bays and estuaries. The purpose of these comments is not to focus on the merit or impact of the proposed rules but to express concerns with the rulemaking process and the lack of justification provided regarding the TCEQ staff analysis for the proposed rules.

The GSA BBASC requested that TCEQ staff attend the GSA BBASC meeting on April 12, 2012 to present the proposed rules along with the specific analysis, data and scientific information used to develop the proposed rules and the justification used by the staff to deviate from the GSA BBASC and/or GSA BBEST recommendations. The GSA BBASC members truly desired to gain an understanding of the proposed

rules through this presentation. We wanted to know if the TCEQ had access to other information and what further analysis they conducted to derive at the proposed rules. Unfortunately, the TCEQ staff did not make a presentation of the rules; nor did they share or explain their analysis or provide the scientific justification for the flow recommendations included in the proposed rules. The staff only repeated what was already in the written material which accompanied the release of the proposed rules, which to the citizen not used to reading TCEQ rules, were difficult to understand in the format presented, lack detail on the analysis, and made it challenging for an individual member to compare/contrast the proposed rules with the GSA BBASC and GSA BBEST recommendations.

Many of the GSA BBASC members are not technical experts, rather they are passionate citizens who have invested hours of personal time into this process and out of respect for this public service believe they are due a more thorough explanation of the proposed rules and the associated TCEQ staff analysis. In the spirit of transparency, all the iterations of the analysis performed by the GSA BBASC and GSA BBEST were shared in their totality with the TCEQ in the submitted reports. These reports also included the scientific and technical interpretation and justification of the associated recommendations. In addition, both the BBEST and the BBASC reports were given the added scrutiny by the Scientific Advisory Committee and the Environmental Flows Advisory Group. All the GSA BBASC members were given direction to a website to review complicated model runs to analyze and determine what was behind the staff recommended proposed rules. Effectively, the TCEQ staff have left each stakeholder with the responsibility to decipher the impact of the proposed rules so they can try to submit comments to the TCEQ.

When asked if the TCEQ had access to more scientific data than was available to GSA BBASC, the TCEQ staff replied that they used the same scientific data used by the GSA BBASC. From that we can only conclude, their analysis resulted in a different conclusion, but the how and why remains unclear. We also learned that the models used for the analysis were not the same models used by the GSA BBASC or GSA BBEST making an apples-to-apples comparison between the proposed rules and the GSA recommendations even more difficult.

We left the meeting on April 12th lacking understanding of the TCEQ staff proposed rules and how they differ from the recommendations we proposed in our report, and most importantly not understanding the impact on the balance of water to meet the needs of humans and the environment. The TCEQ staff had the benefit of sitting through the 18 months of deliberations of both the GSA BBEST and the GSA BBASC, yet we were not afforded the benefit of understanding the deliberations that the TCEQ went through in formulating the proposed rules. The lack of transparency in the rule making process is disturbing especially given the importance of the decisions that are being considered.

We urge the TCEQ to honor the spirit and intent of the SB 3 process and promote more understanding and dialogue throughout the rulemaking process. Agreement on the models, technical tools, assumptions and data to be used should be reached prior to the work of the BBEST, BBASC and TCEQ staff so to have consistency in the analysis and to promote ease in comparing and contrasting of recommendations at all steps of the process. In addition, TCEQ should conduct a workshop with the BBEST and the BBASC during its technical analysis phase to ensure understanding and interpretation of

analysis presented in reports by the BBEST and BBASC. This will improve communication and reduce misinterpretation of the recommendations and strategies presented. This interim interaction between TCEQ and the other two steps in this process will make the process much more transparent for stakeholders to understand the similarities and differences that may result from the TCEQ analysis.

If the TCEQ expects this SB3 process to continue into the future, we respectfully request that you add more transparency into the TCEQ environmental flows rulemaking process.

Respectfully submitted by the Members/Alternates of the GSA BBASC,

Suzanne Scott, Chair

Dianne Wassenich, Co-Chair

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