



REGION 6

DALLAS, TX 75270

November 26, 2024

TRANSMITTED VIA EMAIL

Ms. Cari-Michel La Caille, Director
Office of Water (MC-158)
Texas Commission on Environmental Quality (TCEQ)
Post Office Box 13087
Austin, Texas 78711-3087
cari-michel.lacaille@tceq.texas.gov

Re: EPA Partial Approval / Partial Disapproval Action on 2014 Water Quality Standards

Dear Ms. La Caille:

The Environmental Protection Agency (EPA) has completed its review of several new and revised provisions in the *Texas Surface Water Quality Standards* (TSWQS).¹ This is the seventh action concerning our review of the 2014 standards and includes several new provisions in Appendix G of the 2014 TSWQS, as specified in the enclosure to this letter. I am pleased to inform you that the EPA is approving the revised secondary contact recreation 2 use and associated *E. coli* criterion, for a portion of Indian Creek as documented in Part I of the enclosure, pursuant to section 303(c) of the Clean Water Act (CWA) and the implementing regulation at 40 CFR part 131.

As discussed in Part II of the enclosure, the EPA is disapproving the proposed recreational uses and associated *E. coli* criteria for Resley Creek and the South Leon River as included in Appendix G of the water quality standards submittal. The basis of the disapproval action is that data collected for the recreational use attainability analyses (RUAAs) do not demonstrate that primary contact recreation use is not attainable per factor 40 CFR 131.10(g)(2), nor do the proposed uses comport with §307.4(j) of the TSWQS. Specifically, the RUAAs for Resley Creek and the South Leon River documented substantial pools, as defined in the TSWQS, at several locations in both water bodies during summer months. In addition, landowners near both water bodies reported that Resley Creek and the South Leon River are used by children and adults for swimming and wading. Under 40 CFR 131.21(e), new and revised standards are not effective for CWA purposes until approved by the EPA.

¹ These standards were adopted by the Texas Commission on Environmental Quality (TCEQ), on February 12, 2014, and received by the EPA for review on April 29, 2014.

Section 7(a)(2) of the Endangered Species Act requires that all federal agencies engage in consultation to ensure their actions are not likely to jeopardize the continued existence of any threatened or endangered species, or result in adverse modification of designated critical habitat. The EPA's action on the revised recreational uses is not subject to consultation under the Endangered Species Act, as these provisions are applicable to protection of human health.

The EPA has previously stated that it is taking no action on the definition of "Surface water in the state" in §307.3(a)(71), regarding the reference to §26.001 of the Texas Water Code for the area 10.36 miles offshore into the Gulf of Mexico. Under the CWA, the state of Texas does not have jurisdiction to establish water quality standards more than three nautical miles from the coast. Therefore, the EPA's approval action on the item in the enclosure recognizes the state's authority under the CWA to include waters extending offshore three nautical miles in the Gulf of Mexico, but does not extend past that point. In addition, the EPA's approval action also does not include the application of the TSWQS to the portions of the Red River and Lake Texoma that are located within the state of Oklahoma. The EPA is also taking no action on the Texas WQS for those waters or portions of waters located in Indian Country.

I would like to commend TCEQ for its commitment in completing the task of reviewing and revising the state's water quality standards. The EPA will take subsequent action on the remaining new and revised provisions in §307.9, Appendix A, Appendix C, and Appendix D of the 2014 TSWQS. If you have any questions or concerns, please contact me at (214) 665-6647, or have your staff contact Diane Evans at (214) 665-6677.

Sincerely,

MARK
HAYES

Digitally signed by
MARK HAYES
Date: 2024.11.26
15:24:05 -06'00'

(for) Troy C. Hill, P.E
Director
Water Division

Enclosure

cc: Kelly Mills, Deputy Director, TCEQ - Water Quality Planning Division (MC-203)
kelly.mills@tceq.texas.gov

EPA Review of 2014 Texas Surface Water Quality Standards

The Environmental Protection Agency's (EPA's) action addresses revisions to the *Texas Surface Water Quality Standards* (TSWQS) adopted by the Texas Commission on Environmental Quality (TCEQ) in February 2014 and submitted to the EPA in April 2014. This enclosure provides a summary of the revisions and the actions taken by the EPA. The discussion below covers two types of actions for specific provisions: I. Revisions that are approved for purposes of Clean Water Act (CWA) section 303(c) and II. Revisions that are disapproved for CWA purposes.

The EPA only reviews provisions of state and Tribal submittals that are new or revised water quality standards (WQS). The EPA determines whether a provision is a new or revised WQS after considering the following:

1. Is the provision legally binding, adopted or established pursuant to state or Tribal law?
2. Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States?
3. Does the provision express or establish the desired condition (e.g., uses, criteria) or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future?
4. Does the provision establish a new WQS or revise an existing WQS?

The EPA has concluded that the revised recreation uses and associated criteria in the 2014 TSWQS are revised WQS subject to the EPA's review under CWA section 303(c)(3).

I. REVISIONS THAT THE EPA IS APPROVING

Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies

Background on recreational use attainability analyses

Recreational use attainability analyses (RUAAs) for surface water bodies in Texas are conducted following the TCEQ's RUAA guidance titled *Recreational Use-Attainability Analyses (RUAAs): Procedures for a Comprehensive RUAA and a Basic RUAA Survey*.¹ The RUAA procedures establish a framework for each phase of the RUAA including initial planning, site reconnaissance, interviews with landowners, field work, and coordination with state and local authorities. A comprehensive RUAA is required when conducting a study on a classified segment identified in Appendices A and C of the TSWQS, or where the investigators believe that a secondary contact recreation 2 use or noncontact recreation use may be appropriate in any water body. A basic RUAA can be conducted on unclassified water bodies to verify that a presumed primary contact use or determine whether a secondary contact recreation 1 use is appropriate.

¹ TCEQ. 2014. *Recreational Use-Attainability Analyses (RUAAs) - Procedures for a Comprehensive RUAA and a Basic RUAA Survey*. Texas Commission on Environmental Quality. Austin, TX. 26 pp. Available on-line at: <https://www.tceq.texas.gov/waterquality/standards/ruaas/index>.

In the planning stages for each RUAA, the TCEQ WQS team coordinates within the agency and with other state agencies in reviewing the type of RUAA needed (basic or comprehensive), the location and number of proposed sampling sites, and historical information. The RUAA investigators must contact local and regional entities, plus hold an informational meeting to obtain feedback on the proposed sampling sites, prior to starting field work for the RUAA. A quality assurance project plan (QAPP) is approved by the TCEQ WQS team, if information obtained during project planning indicates that conducting a RUAA is appropriate.

Interviews are required for comprehensive RUAA's and may also be conducted for basic RUAA's. Interview questions include the following:

- Are you familiar with the stream, which area, and for how many years?
- Would you characterize the stream as ephemeral, intermittent, intermittent with perennial pools or perennial?
- Do you or your family use the stream for recreation? If no, why not?
- Have you seen others use the stream for recreation?
- Have you heard of others using the stream for recreation?
- What activities are the stream used for, when, and how often [question applicable to personal, observed and "heard of" uses]?

The TCEQ has established procedures for assessing physical characteristics of streams as part of its ambient monitoring program. These methods are part of the state's protocols for RUAA's to evaluate aquatic life uses, as well as recreation uses. The TCEQ's RUAA procedures include measurements or observations for the following physical characteristics:

- Flow status in channel and measured stream flow;
- Length and width of substantial pools (i.e., length > 10 meters, depth > 1 meter);
- Average depth at thalweg, measured along several transects at each site;
- Stream width (narrowest, widest, typical);
- Description of the riparian area;
- Observed recreational activities and indications of past recreational use; and,
- Conditions that promote or impede recreational activities.

The RUAA procedures require that investigators contact the TCEQ's regional office, the appropriate partner agency under the state's Clean Rivers Program, the Texas Parks and Wildlife Department, and the Texas State Soil and Water Conservation Board to inform them about the planned RUAA and to obtain information related to any aquatic recreation activities. The RUAA procedures recommend contacting the following entities when possible: local parks departments, conservation groups, watershed organizations, canoe clubs, the county extension agent, and flood control districts. The TCEQ's RUAA procedures also include requirements for photo documentation at each sampling site.

Indian Creek (tributary to segment 1221 - Leon River below Proctor Lake)

The headwaters of Indian Creek originate west of the City of Comanche and the stream flows approximately 30 miles east to its confluence with segment 1221 – Leon River below Proctor Lake. In the 2014 TSWQS, the TCEQ revised the presumed primary contact recreation use for the downstream reach of Indian Creek and adopted a secondary contact recreation 2 use with an *E. coli* criterion of 1030 colonies/100 mL (geometric mean), as shown below:

Segment	Water body	Recreation Use	<i>E. coli</i> criterion (geometric mean)
1221	Indian Creek	Secondary Contact Recreation 2	1030 colonies/100 mL

The water body description for Indian Creek in the 2014 revision read “From confluence with Leon River, upstream to confluence with Armstrong Creek.” In the 2018 revision of the TSWQS, the TCEQ made editorial changes to the water body description for Indian Creek to read “From confluence with Leon River upstream to the confluence with Armstrong Creek.” This area is east of the City of Comanche and is approximately 17 miles in length.

Surveys for the RUAA on Indian Creek were conducted during July - August 2009 and July - August 2011. The RUAA surveys were conducted following the 2009 version of the TCEQ’s RUAA procedures. The 2009 surveys included 13 sites, including the area within the City of Comanche, downstream to the confluence with segment 1221 of the Leon River. The 2011 surveys included 11 sites, five of which are located upper area of Indian Creek for which a primary contact recreation use was retained in the 2014 TSWQS. As noted in the RUAA report for the 2011 surveys, record drought conditions existed in summer 2011. Accordingly, the EPA relied primarily on the 2009 surveys for its review. In addition to field measurements, interviews were conducted during the 2009 surveys with five landowners along the lower reach of Indian Creek. Two of the interviews reported that they occasionally fished in Indian Creek or had seen other people fishing. Each of the interviewees noted the lack of water in Indian Creek and there were no reports of swimming or wading (current or historical; personal, “heard of”, or observed).

The RUAA documented low flow conditions in the lower reach of Indian Creek in the 2009 and 2011 sampling events. Streambeds were dry or not flowing at most sampling stations in the 2009 and 2011 sampling events. In the 2009 surveys, only two sites in the lower reach of Indian Creek were characterized as perennial. However, there was no measurable stream flow at either of these two locations. The state of Texas defines substantial pools as longer than 10 meters, and with a depth over 1 meter. There were no substantial pools found at any sites in the 2009 surveys. At each sampling site, depth measurements were made at 10 transects. Two locations in the lower reach were reported as having “sufficient water for primary contact recreation.” However, the average thalweg at these sites were 0.4 meters and 0.5 meters. With the exception of site 1221D.15, the average thalweg of each site was 0.5 meters or less. The average thalweg of all sites in the reach with the revised recreation use was 0.4 meters.

The RUAA documented that the primary contact recreation use is not attainable in the downstream reach of Indian Creek, due to the factor specified at 40 CFR 131.10(g)(2) of the federal regulation (“Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met”). The EPA approves the secondary contact recreation 2 use and the associated *E. coli* criterion for the reach of Indian Creek downstream of the confluence with Armstrong Creek.

II. REVISIONS THAT THE EPA IS DISAPPROVING

Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies

The headwaters of Resley Creek originate north of the City of Dublin and the stream flows south approximately 34 miles to its confluence with segment 1221 - Leon River below Proctor Lake. Within the City of Dublin, a municipal park and neighborhoods are located along Resley Creek. The headwaters of the South Leon River originate south of the City of Comanche and the stream flows northeast for approximately 17 miles to the confluence with segment 1221 – Leon River below Proctor Lake.

In the 2014 TSWQS, the TCEQ revised the presumed primary contact recreation uses for Resley Creek and the South Leon River, as shown in the following table. The EPA concludes that the proposed revision to the recreation uses for both water bodies are not supported by findings of the RUUAs, as required by 40 CFR 131.10. Therefore, the EPA is disapproving the revised uses and associated criteria, as presented below and further discussed:

Segment	Water body	Use	<i>E. coli</i> criterion (geometric mean)
1221	Resley Creek	Secondary Contact Recreation 2	1030 colonies/100 mL
1221	South Leon River	Secondary Contact Recreation 1	630 colonies/100 mL

Resley Creek (tributary to segment 1221 - Leon River below Proctor Lake)

RUAA surveys were conducted on Resley Creek in June - August 2009, with additional sampling conducted in July 2011. In the 2014 TSWQS, the TCEQ adopted a secondary contact recreation 2 use for Resley Creek, with an *E. coli* criterion of 1030 colonies/100 mL (geometric mean). Appendix G of the 2014 TSWQS included the following description for this area:

“From the confluence of the Leon River east of Gustine in Comanche County to the upstream perennial portion of the stream north of Gustine in Comanche County”.

In the 2018 revision of the TSWQS, the TCEQ made clarifications to the description of Resley Creek in Appendix G to read:

“From the confluence of the Leon River east of the City of Gustine in Comanche County to the headwaters 3.3 km upstream of SH 6 in Erath County ~~upstream perennial portion of the stream north of Gustine in Comanche County~~”.

The 2009 survey included 18 sampling sites and the 2011 survey included 14 sampling sites. Low flow conditions in Resley Creek and dry streambeds were observed at several sampling stations in both the 2009 and 2011 sampling events. As noted in the 2011 survey, record drought conditions existed throughout much of Texas in summer 2011. Accordingly, the EPA relied on the 2009 survey for its review.

In the 2009 survey, only two sites in Resley Creek were characterized as perennial, one site in the middle reach and one site at the downstream end. However, several sites between these two locations had sufficient water for primary contact recreation at the time of sampling for the RUAA. Substantial pools, defined as longer than 10 meters and with a depth of 1 meter or greater, were found at three sites in Resley Creek. Two additional sites had pools with a depth of 0.9 meters. Depths over 1 meter were reported at transects at several sites in Resley Creek, although the average depth of most sites was less than 0.5 meters. During the 2011 sampling, all sites were either dry or had no flowing water. There were no substantial pools found at any site in Resley Creek during the 2011 surveys.

Six interviews with landowners were conducted during the 2009 surveys of Resley Creek. At the upper reach, a landowner reported that recreation does not occur in the stream due to lack of water. Sites within the City of Dublin were surveyed in June 2009 and water was present. Although Resley Creek was very shallow at most survey sites, a depth of 1.7 meters was found in one transect. A property owner within the City of Dublin noted that children wade in the stream. Another landowner located south of the City of Dublin reported using Resley Creek for swimming and wading, as well as for hunting and fishing, although less frequently in recent years. Evidence of primary contact recreation, including inner tubes and children’s toys, were found at three sites during the 2009 and 2011 RUAA surveys.

The RUAA does not demonstrate that the primary contact recreation use is unattainable in Resley Creek because of “Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met” (40 CFR 131.10(g)(2)). The EPA disapproves the proposed secondary contact recreation 2 use and the *E. coli* criterion, as the RUAA demonstrates that primary contact recreation is an existing use in Resley Creek. The TCEQ may correct this disapproval by removing the secondary contact recreation 2 use and the criterion from Appendix G, in the next revision of the TSWQS.

South Leon River (tributary to segment 1221 - Leon River below Proctor Lake)

RUAA surveys were conducted on the South Leon River in June - August 2009. In the 2014 TSWQS, the TCEQ adopted a secondary contact recreation 1 use, with an *E. coli* criterion of

630 colonies/100 mL (geometric mean), for the South Leon River. The water body description for the South Leon River in the 2014 TSWQS read “From the confluence of the Leon River south of Gustine in Comanche County to the upstream perennial portion of the stream south of Comanche in Comanche County”. In the 2018 revision of the TSWQS, the TCEQ made editorial changes to the water body description for the South Leon River to read “From the confluence of the Leon River south of the City of Gustine to the upstream perennial portion of the stream south of the City of Comanche”.

The 2009 RUAA included 10 survey sites. Low flow conditions or dry streambeds were observed at several sampling stations in the South Leon River. However, several pools longer than 10 meters were found at the survey site located at State Highway 16 and at most sites downstream of this point. This area represents approximately two-thirds of the length of the South Leon River. Many of these pools were deeper than 1 meter. Most of these sites were sampled in mid-June, with no precipitation during the preceding week. Although access to the South Leon River is limited by private property and difficult in a few locations, there are several bridge crossings with public access to the stream. The project investigators noted there was sufficient water for primary contact recreation at five of the 10 survey sites for the RUAA.

Four interviews with landowners along the upper reach of South Leon River were conducted for the RUAA. Several interviewees reported that they do not use the South Leon River for recreation due to lack of water. One of these interviewees noted that they have heard of others using the stream for swimming and wading. The same person also noted the presence of snakes near the water body. At the uppermost site, a landowner reported that their family does not use the stream for recreation due to lack of water, but had observed wading by children and adults. One landowner reported that they kayak in the South Leon River, although not on a frequent basis.

The RUAA does not demonstrate that the primary contact recreation use is unattainable in South Leon River because of “Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met” (40 CFR 131.10(g)(2)). The EPA disapproves the proposed secondary contact recreation 1 use and the *E. coli* criterion, as the RUAA demonstrates that primary contact recreation is an existing use in the South Leon River. The state may correct this disapproval by removing the secondary contact recreation 1 use and the criterion from Appendix G, in the next revision of the TSWQS.