

From: [Texas Sunset Advisory Commission](#)
To: [Sunset Advisory Commission](#)
Subject: Public Input Form for Agencies Under Review (Private/Before Publication)
Date: Thursday, June 9, 2022 10:57:40 AM

Submitted on Thu, 06/09/2022 - 09:47

Submitted by: Visitor

Submitted values are:

Choose the agency that you would like to provide input about
[Texas Commission on Environmental Quality](#)

Public Comments

1

First Name

Carlos

Last Name

Rubinstein

Title

Principal

Organization you are affiliated with

RSAH2O LLC

Email

carlos@rsah2o.com

City

Austin

State

Texas

Your Comments or Concerns

I have reviewed the Sunset Staff Report and recommendations related to the TCEQ's review. I focus on the issues identified by staff as "TCEQ Oversight of Water Could Better Protect the State's Scarce Resources". My concerns find agreement in part with findings from the Sunset Staff relative to environmental flows, protection of the health of Texas waterways, water availability, water modeling, and the primary purpose for the designation of priority groundwater management area studies and the establishment of groundwater conservation districts.

My concerns can be summarized as follows:

1. Wasteful use of water contributes to water shortages.
2. Wasteful use of water devalues the investments made to study, plan for, develop, treat and put to beneficial use the state's most precious resource – water.

3. The state of Texas, via the TWDB, makes available significant funding to identify and address water losses from leaking pipes in a distributions system. However, there is a lack of investment in and recognition of the value of water wasted prior to treatment.
4. Wasteful use of water is not limited to surface water alone.
5. TCEQ permits drinking water treatment plants that rely on either surface water, groundwater or both.
6. TCEQ permits wastewater treatment plants that rely on either surface water, groundwater or both.
7. TCEQ permits the use of the bed and banks of Texas rivers and streams for the conveyance of privately owned water – particularly groundwater discharges to the river or stream for conveyance and use downstream, or wastewater return flows derived from groundwater use to also be conveyed and used downstream.
8. Addition of non-native water to a river via groundwater discharges or wastewater derived from groundwater increases the surface area of the stream which contributes to increased evaporative losses that can affect all downstream users.

The TCEQ identified as a major issue the need to address legislative authority to protect public health, safety, and welfare during droughts and emergency shortages. The Sunset staff report speaks in part to this major issue and the wasteful or inappropriate use of water.

Chapter 11 of the Texas Water Code (TWC) already contains a partial and narrow definition of wasteful use of water. Specifically, §11.092 applies to persons who own or has control over land contiguous to a canal or irrigation system and acquires water and subsequently places the same to a wasteful use. The TCEQ is granted authority in part but not totally to mitigate such wasteful use of water in various sections of the Water Code to include TWC §11.052, §11.085, §11.088, §11.093, §11.205, §11.327, and §11.3271.

TCEQ authority to consider and issue bed and bank permits to convey privately owned water (groundwater) either as a direct discharge to a receiving stream or “return flows” of wastewater derived from groundwater is noted in the Water Code under sections §11.042 and §11.3271.

Chapter 36 of the Texas Water Code similarly defines and prohibits the wasteful use of groundwater to include §36.001, §36.002, §36.101, §36.1071, §36.108, §36.113, §36.116, and §36.119.

Your Proposed Solution

I recommend that as part of the Sunset review:

1. The Water Code be amended to grant more comprehensive authority and mandate of the TCEQ to abate wasteful use of water.
2. In order to avoid cross concerns specific to groundwater ownership, the authority recommended in 1 above could be limited to instances where water (wastewater return flows derived from groundwater, or from groundwater production and discharge into a stream for conveyance) contributes to waste or increased evaporative losses. The TCEQ’s authority to mitigate wasteful use of surface water would not be limited by this recommendation
3. The TCEQ should be tasked to hold hearings, receive input, develop guidance and rules that more clearly define waste of water – or water not put to beneficial use and the steps the TCEQ is authorized to undertake, including enforcement, to prevent such wasteful use of water.
4. Specific to Bed-and-Bank authorizations, the TCEQ should be tasked to develop rules and special permit conditions to promote better conjunctive use of water. For example – the TCEQ should be required to request of a permit holder seeking a Bed-and -Bank authorization to convey groundwater to first secure and use (temporarily or in perpetuity), if available, excess flows via a scalping permit or unappropriated surface water in a stream from storm events or

other conditions that contribute to availability of such flows before groundwater is developed and produced for discharge for conveyance to the same stream. Such action would have a dual conservation effect. It promotes better use of surface water when available, conserves surface water in storage and similarly conserves groundwater in place for use when it is most needed.

Attachment

[RSAH2O comments to Sunset re SSR - TCEQ Final.pdf](#) (98.38 KB)

My Comments Will Be Made Public

Yes



June 9, 2022

Ms. Jennifer Jones
Executive Director

Attn: Texas Commission on Environmental Quality (TCEQ)

P.O. Box 13066
Austin, Texas 78711

Re: Comments regarding the Texas Commission on Environmental Quality Sunset Review

Dear Ms. Jones

I write today to express support for the continuation of the Texas Commission on Environmental Quality (TCEQ) as you undergo the agency's Sunset review. As former Commissioner and Deputy Executive Director of the TCEQ I know first-hand the critical role the agency plays in the protection of human health and the environment.

Having expressed my support, I also want to avail myself of the open comment period to provide insight and express concern over some of the functions the TCEQ is charged or limited in undertaking. I have reviewed the Sunset Staff Report and recommendations related to the TCEQ's review. I focus on the issues identified by staff as **"TCEQ Oversight of Water Could Better Protect the State's Scarce Resources"**. My concerns find agreement in part with findings from the Sunset Staff relative to environmental flows, protection of the health of Texas waterways, water availability, water modeling, and the primary purpose for the designation of priority groundwater management area studies and the establishment of groundwater conservation districts.

My concerns can be summarized as follows:

1. Wasteful use of water contributes to water shortages.
2. Wasteful use of water devalues the investments made to study, plan for, develop, treat and put to beneficial use the state's most precious resource - water.
3. The state of Texas, via the TWDB, makes available significant funding to identify and address water losses from leaking pipes in a distributions system. However, there is a lack of investment in and recognition of the value of water wasted prior to treatment.
4. Wasteful use of water is not limited to surface water alone.

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8. Addition of non-native water to a river via groundwater discharges or wastewater derived from groundwater increases the surface area of the stream which contributes to increased evaporative losses that can affect all downstream users.

The TCEQ identified as a **major issue** the need to address legislative authority to protect public health, safety, and welfare during droughts and emergency shortages. The Sunset staff report speaks in part to this major issue and the wasteful or inappropriate use of water.

Chapter 11 of the Texas Water Code (TWC) already contains a partial and narrow definition of wasteful use of water. Specifically, §11.092 applies to persons who own or has control over land contiguous to a canal or irrigation system and acquires water and subsequently places the same to a wasteful use. The TCEQ is granted authority in part but not totally to mitigate such wasteful use of water in various sections of the Water Code to include TWC §11.052, §11.085, §11.088, §11.093, §11.205, §11.327, and §11.3271.

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Chapter 36 of the Texas Water Code similarly defines and prohibits the wasteful use of groundwater to include §36.001, §36.002, §36.101, §36.1071, §36.108, §36.113, §36.116, and §36.119.

Specifically, I recommend that as part of the Sunset review:

1. The Water Code be amended to grant more comprehensive authority and mandate of the TCEQ to abate wasteful use of water.
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These recommendations, if implemented, can assist in mitigating circumstances where the TCEQ is forced to mandate water curtailments. Similarly, if implemented, these recommendations add value to water and strengthen the ability of the TCEQ to better protect our scarce water resources

Respectfully,



Carlos Rubinstein