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To: Legislative Budget Board
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Sierra Club's Comments on the 2028-2029 Legislative Appropriation Request Submitted by the Texas Commission on Environmental Quality

The Sierra Club Lone Star Chapter is pleased to offer these comments on the 2028-2029 Legislative Appropriation Request (LAR) submitted by the Texas Commission on Environmental Quality (TCEQ). We have been actively engaged with the agency on a number of issues, including surface water quality standards, reuse of produced water, air quality standards, and others. Texas continues to grow, and TCEQ's workload is growing with it, while the agency is also taking on new responsibilities. One of the examples is the reuse of produced water – a wastewater stream that TCEQ hasn't regulated before – where stringent permitting, monitoring, and enforcement will be very important. Meanwhile, some of the agency's existing tasks – such as the revision of the Surface Water Quality Standards (SWQS) – are already taking longer than expected. In addition, while there is considerable uncertainty because of recent federal delays, we continue to see a need for the development of new State Implementation Plans for both methane and PM 2.5. In fact, we believe TCEQ can take actions now on these issues, even as the federal government considers changes in standards on these two pollutants.

We do want to recognize that in part because of changes the Sierra Club supported through both legal action on language access, as well as changes on public participation required by sunset legislation - SB 1397 - that the Sierra Club supported in 2023, new requirements to put information online in multiple languages and allow for more public meetings and hearings has increased both technological and staff needs. Finally, the recent increase in proposed development of new data centers and AI facilities has increased the strain on TCEQ staff.

For these reasons, we are generally supportive of the agency's budget request for the next biennium. Our comments below focus on making sure the agency has the staff, funding, and scientific expertise to do this work and protect Texans' health and natural resources. In addition,

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we believe there are several areas of work where additional monies are needed - including additional money for the development of the SWQS, money for enhanced air quality monitoring, and money for assessing unused water rights. Lastly, we support several of the new proposed riders, but disagree with the agency's request to delete Rider 28, which requires an annual TERP report, in favor of the statutory biennial report.

Sierra Club's Comments on the Agency's Exceptional Item Requests (EIRs)

Sierra Club supports EIR 1: $14,615,610 + 42 FTEs over the biennium to meet the increase in workload for wastewater permitting, district applications, beneficial reuse of reclaimed water and wastewater, compliance and enforcement, expertise in chemical toxicity, risk assessments, and interpretation of chemical concentrations. We see a particular need for these resources as TCEQ assumes new responsibilities related to produced water reuse. Following the passage of SB 1145 last session, the agency now permits land application of produced water in addition to already existing permitting responsibility associated with discharges of treated produced water into waterways. However, we urge TCEQ not to rush ahead of science as the agency expands its work on produced water. Research on treatment and beneficial reuse of produced water is still developing and long-term impacts of reuse on public health and the environment remain poorly understood. Until this research is more mature to adequately inform standards and permit requirements protective of the environment and public health, TCEQ shouldn't approve permits for land application and discharges into waterways. In the meantime, TCEQ should continue working closely with the Texas Produced Water Consortium and allow the best available science to guide how treated produced water is reused and regulated.

We would also like to note that a substantial portion of the EIR 1 is the request for $2.7M/year for the Clean Rivers Program. Consistent surface water quality monitoring becomes even more important as TCEQ considers new types of wastewater streams, including treated produced water and concentrated brine from seawater desalination facilities. Therefore, we support this request.

Indeed, a recent water quality integrated report issued by TCEQ found there were 481 water bodies out of a total of 1,103 named segments where "*Available data or information indicate that at least one designated use is not being supported or is threatened, and a TMDL is needed.*"

Sierra Club supports EIR 2: $9,175,110 + 31 FTEs for the biennium for investigations, air quality monitoring, emergency response, and enforcement. In their LAR, TCEQ stated that over the last 10 years, the number of facilities that the agency regulates has increased by 46%. TCEQ is already dealing with a significant enforcement backlog, with more than 900 enforcement cases still backlogged as of August 2026. Moreover, TCEQ data also show that it takes the agency an average 528 days to process an enforcement case. We strongly support additional staff and resources for inspections, responding to complaints from Texans, and taking timely and effective enforcement action.

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Sierra Club supports EIR 3: $1,677,192 + 10 FTEs for additional staff to enhance the public engagement process. As the number of permit applications grows, and more Texans become interested in weighing in on projects such as data centers, seawater desalination proposals, and new uses of treated produced water, TCEQ will need enough staff to keep up with the growing demand for public meetings and other stakeholder engagement activities. Again, part of this requirement is related to enhanced public participation and transparency requirements added as part of the 2023 Sunset legislation.

Sierra Club supports EIR 5: $16,864,637 + 15 FTEs to enhance TCEQ's support services. We're particularly in favor of additional resources to improve public access to the information and data, including TCEQ's ability to respond to Public Information Requests. Texans should be able to get agency records that they request without unnecessary delays.

Sierra Club supports EIR 6: $20,546,702 to restore funding for remediation programs and grants that had to be cut due to the 3% reduction required for agencies' 2028-2029 baseline budget requests. These programs support the assessment and cleanup of contaminated sites, including leaking petroleum storage tanks, Superfund sites, and contamination from dry-cleaning solvents. We support restoring this funding rather than leaving these programs to absorb the required budget reduction.

Sierra Club Recommendations and Positions on Budget Requests for Specific Strategies

Strategy 1.1.2: Water Resource Assessment and Planning. Compared with the previous biennium, TCEQ's baseline request for this strategy is substantially smaller: from approximately $102.9M in the 2026-2027 LAR down to $77.4M for 2028-2029. We're concerned about this decrease because this strategy is important for Texas water quality. It includes development of the Surface Water Quality Standards (SWQS), water quality monitoring and assessment, TMDLs, nonpoint source pollution programs, groundwater protection programs, the Clean Rivers Program, and others. EIR 1 would add approximately $5.9M to this strategy – which we support – however, about $5.4M of that specific request is for additional Clean Rivers Program grants, and no additional funding is being requested for the ongoing, but significantly, delayed, SWQS revision.

We recommend that LBB provide additional funding and FTEs under this strategy specifically for the development and revision of the SWQS. The standards under which Texas presently operates were adopted in 2022. The preliminary public comment period for the current triennial review took place in summer of 2024, and at the time, TCEQ referred to this process as the 2026 revision. However, now it's identified as the 2027 revision, with the updated SWQS expected to be finalized next year. Throughout this time, TCEQ's Water Quality Standards Advisory Work Group (WQSAWG) has only held one public meeting, in March 2025. In February of this year, the

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agency announced another public meeting, however, it got canceled and has never been rescheduled. Moreover, the agency's revision timeline doesn't yet provide dates for the release of the draft proposal, public common period, or adoption. Importantly, the SWQS are used to determine whether Texas waterbodies are impaired and to set limits in wastewater discharge permits, and when the state's SWQS fall behind, so does the regulatory framework that depends on them.

There are also several emerging issues that require the development of additional SWQS:

- Texas is actively pursuing seawater desalination as a new water supply strategy. The 2027 State Water Plan includes 8 proposed seawater desalination projects along the Texas coast, but Texas still lacks SWQS for salinity to protect bays and estuaries from concentrated brine discharges. However, it's unclear what progress has been made, and the agency hasn't held a public meeting specifically to discuss this work.
- Texas is also actively considering reuse of treated produced water as a new water supply, and one of the types of reuse is to discharge treated produced water in rivers and streams. TCEQ is currently reviewing 8 such permit applications, while the science on treatment and toxicity is still ongoing. TCEQ staff have acknowledged that work is still underway to identify constituents of concern that might be found in produced water and develop values that can be used in permitting. The agency has also acknowledged that it intends to approve the first two permits soon. TCEQ urgently needs to develop protective and enforceable SWQS that account for the constituents and potential toxicity of this wastewater stream and enhance monitoring efforts to make sure that permitted discharges aren't harming water quality, communities, and ecosystems.
- Pre-production plastic pollution – raw plastic materials in the form of pellets, powders, and flakes — continues to harm Texas waterways and wildlife. The 2026 International Pellet Count documented over 1 million pre-production plastic pellets found along the Texas coast, far more than were recorded in any other state included in the survey.[1] Despite the growing problem, pre-production plastics aren't addressed in the current SWQS, which is a serious omission given how toxic and widespread these raw plastic materials are.

We strongly support additional resources to be allocated to TCEQ specifically for the revision and development of additional SWQS to address the emerging threats to surface water quality.

In addition, we would like to underscore the importance of continued funding for TCEQ's Nonpoint Source Program. The Clean Water Act Section 319 grants support statewide work to reduce polluted runoff, including projects that restore waterways, address sources of pollution on the ground, monitor water quality, and help communities develop and carry out watershed

[1] *2026 International Plastic Pellet Count*, Waterkeeper Alliance: https://waterkeeper.org/wp-content/uploads/2026/06/International-Plastic-Pellet-Count-Report-2026.pdf

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protection plans. The TCEQ's LAR assumes about $2.9M per year in federal Nonpoint Source Implementation funding for 2028-2029. The President's FY2027 budget, however, proposes eliminating Section 319 funding, which is reflected in the EPA's Justification of Appropriation Estimates for FY2027.[2] If federal funding is further reduced or eliminated, we ask LBB to consider additional state funding for TCEQ to keep this important work going.

Strategy 1.2.2: Water Resource Permitting. TCEQ is requesting approximately $38.1M in baseline funding for Water Resource Permitting for 2028-2029, up from approximately $31.5M in its 2026-2027 LAR. EIR 1 would add another approximately $1.62M under this strategy. We support these requests, particularly as TCEQ takes on new responsibilities related to produced water.

Following the passage of SB 1145, TCEQ is now responsible for permitting land application of treated produced water in addition to its existing responsibilities for permits involving discharges of treated produced water into surface waters. TCEQ itself identifies produced water as part of its growing permitting workload. EIR 1 also requests additional resources for wastewater permitting, compliance and enforcement, chemical toxicity expertise, risk assessment, and interpretation of chemical concentrations. We agree that these are areas where additional capacity will be needed, and while we support additional resources for this work, funding should also ensure that permit requirements go hand in hand with consistent monitoring and strict enforcement.

There's another area under this strategy where we believe additional staff and resources are needed, which is related to the revision of water rights. We recommend that TCEQ assess unused and consistently underused water rights and consider cancellation where water hasn't been used for 10 years or longer (e.g., when older thermal power plants retire and no longer use their water rights). The Sierra Club's recent analysis found that Texas coal plants alone hold rights to consume as much as 116B gallons of water annually, with some of those plants scheduled for retirement.[3] Rather than continuing to assume that this water will remain tied to power generation indefinitely, Texas should understand how much could potentially become available for other uses, including protection of environmental flows. We recommend that LBB provide TCEQ with the resources needed to assess these unused and underused water rights. As part of this work, TCEQ should also collaborate with the Texas Water Development Board (TWDB) to make sure that these changes are incorporated in the State Water Plan.

Strategy 2.1.1: Safe Drinking Water Oversight. We're pleased to see TCEQ requesting increased funding for its activities related to Safe Drinking Water. The baseline request has increased from

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[2] *Justification of Appropriation Estimates for the Committee on Appropriations*, Environmental Protection Agency, FY2027;
https://www.epa.gov/system/files/documents/2026-04/epa-fy27-congressional-justification.pdf

[3] *Watts Wasting Texas Water.* Lindsay Mader & Noah Ver Beek, Sierra Club, 2026
https://www.sierraclub.org/sites/default/files/2026-05/texaswaterreport_final.pdf

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approximately $62.9M for the 2026-2027 biennium to $81.6M in 2028-2029, with another approximately $1.75M requested through EIR 1. We support this increase and additional resources for drinking water sampling and monitoring of public water systems.

Strategy 3.1.1: Field Inspections and Complaint Response; and Strategy 3.1.2: Enforcement and Compliance Support. We also support the funding requested for Field Inspections and Complaint Response ($145.2M) and Enforcement and Compliance Support ($43.5M). TCEQ regulates a growing number of facilities, and additional permits are of little value if the agency doesn't have enough staff to inspect facilities, respond to complaints, identify violations, and take timely enforcement actions. This additional capacity will also be important as TCEQ takes on new types of wastewater permits. For reuse of produced water in particular, monitoring and enforcement should develop alongside the permitting program. If TCEQ is going to authorize reuses of this wastewater, the agency needs the staff and resources to determine whether permit requirements are actually being met and whether permitted activities are affecting nearby surface water, groundwater supplies, landowners, and communities.

Strategy 6.1.2. Information Resources. We support the $94.9M in baseline budget for Information Resources. We appreciate TCEQ's recent work to make more information available and easier to access online. We've seen improvements in the agency's website and the addition of interactive viewers that allow the public to access environmental, permitting, and other data directly. We encourage continued investment in these tools. The Information Resources Division also handles records management and the responses to Public Information Requests, and we support continued resources for this work as well.

Additional Needs and Riders

We are generally supportive of TCEQ's proposed riders, including Rider 701 - associated with a new program required by legislation - which the Sierra Club supported - to implement TCEQ's *Aboveground Storage Vessel Safety Program* which requires certain industrial facilities to register with the agency and meet certain standards, as well as proposed Rider 702 related to SB 2037. However, we are opposed to two riders. First, as we have stated for more than a decade, Rider 26, which prevents TCEQ from extending any permit by rules for oil and gas operators outside the Barnett Shale without conducting a study first – but then not actually authorizing any funds to conduct such a study – in our view is limiting the agency and creating law. It would be better to either remove the rider or authorize funding to conduct such a study. There are already statutory limits to TCEQ's ability to implement new permit-by-rules for oil and gas without such a study, but a rider that specifically does not allow funding serves no purpose other than to ensure inaction by the agency. Instead, remove the rider or fund the study.

In addition, we disagree with the proposed removal of Rider 28, the annual TERP report. We believe this annual report is useful. While it is true that TCEQ already publishes a biennial report

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under state statute, reporting annually is useful for information tracking and as part of TCEQ's weight of evidence for the ozone State Implementation Plan.

Air quality monitoring. Sierra Club recognizes that the LAR does include money to maintain the current level of mobile and more permanent air monitoring for ozone, PM 2.5 and other pollutants, as well as support for local government for the monitoring of ozone and PM 2.5 and we support this effort. However, there remains a real and demonstrated need to expand our air quality monitoring network. As we have detailed in our public comments on the agency's annual monitoring network plan, TCEQ lacks geographic coverage of criteria pollutants particularly in West and South Texas, and also lacks networks for specific toxics that may be impacting Texas communities and workers. The Sierra Club would like to suggest that the legislature consider a one-time use of the balances still found in the TERP Account before the 2021 legislation was enacted. With over $2 billion in Account No. 5731, Sierra Club would support a four-year $100 million air quality monitoring effort to expand monitoring of methane, PM 2.5, ozone and toxic pollutants like hydrogen sulfide. Investing $25 million a year on the staff and capital equipment needed to truly protect Texans and create enforceable SIPs for new concerns like methane and PM 2.5 would go a long way to improving our quality of life.

Analysis of Water Rights. The 2023 Sunset process for TCEQ revealed a lack of analysis of existing water right holders for the surface water rights of the state. While TCEQ currently has a useful online tool of water right holders on its website, the agency has not conducted a thorough review of the thousands of water right holders who hold permits, adjudicated rights or certificates along Texas' 15 major river basins. We believe that a small amount of allocated funds could be used to direct the agency to look at whether there were unused water rights that could be subject to cancellation. Even if no enforcement action was needed, identifying water right holders that are no longer actively utilizing their certified, adjudicated or permitted water right could help the state identify available resources, whether to meet environmental flow needs or other needs of the state.

Thank you for the opportunity to provide these comments.