

December 2, 2024

Rules Coordinator  
Railroad Commission of Texas  
Office of General Counsel  
P.O. Drawer 12967  
Austin, Texas 78711-2967  
Via Email: rulescoordinator@rrc.texas.gov

RE: Draft Rules for Informal Comment, 16 TAC 3.82

Dear Rules Coordinator,

TerraVolta Resources (“TerraVolta”) is one of the largest lithium rights stakeholders in Texas. TerraVolta has assembled a substantial acreage position in East Texas with rights to produce lithium entrained in brine in the Smackover Formation. TerraVolta has been building this position since early 2022 and was one of the first operators in Texas taking leases that targeted lithium contained in brine. These leasing efforts continue today, as TerraVolta is actively leasing acreage to support multiple facilities in East Texas. TerraVolta utilizes direct lithium extraction, a process that involves selectively removing lithium ions and molecules from a brine solution. This technology ensures high production with minimal environmental impact by requiring less land and water than traditional lithium recovery methods.

TerraVolta would like to thank the Railroad Commission of Texas (the “Commission”) for its work developing the proposed new Section 3.82 of Volume 16 of the Texas Administrative Code and corresponding revisions to ancillary statewide rules (the “Proposed SWR 3.82”). From the draft, it is clear that Commission staff has worked diligently to draft a rule that could enable operators and stakeholders to unlock vast economic resources to this great state.

Below are TerraVolta’s comments regarding specific aspects of the Proposed SWR 3.82.

**3.5(a) – Application to Drill, Deep, Reenter, or Plug Back; and 3.82(a)(3) – Scope and Purpose**

The Proposed SWR 3.82 would modify Rule 3.5(a) to make brine production projects generally subject to other statewide rules for oil and gas production, such as Statewide Rules 37, 38, 39 and 40; moreover, the Proposed SWR 3.82 at (a)(3) would generally make brine production projects subject to other applicable oil and gas rules. And yet, the Proposed SWR 3.82 has specific provisions drafted exclusively for brine production, which creates a risk that a conflict could arise between the Proposed SWR 3.82 and the other statewide rules for oil and gas production. To resolve this potential conflict, TerraVolta proposes the following change to the Proposed SWR 3.82(a)(3):

- page 24, line 6 – add the underlined sentence:  
“(3) The operator of a brine production project, including associated brine production wells and Class V spent brine return injection wells, shall comply with the requirements of this section as well as with all other applicable Commission rules and orders. To the



extent of any conflict between the provisions of another Commission rule and this section, the provisions of this section shall prevail.”

**3.82(b)(4)** – *Definition of Area of Review*; **3.82(e)(3)** – *For Plats Accompanying Applications*; and **3.82(f)(2)(A)** – *Persons to Notify*

The Proposed SWR 3.82(B)(4), defines “area of review” to include a ¼-mile halo around the Brine Production Project Area. That defined term is then used in several instances to require operators to conduct title searches and provide extraordinarily costly and time intensive notices, particularly given the expansive sizes of anticipated brine production project areas. For example, if a brine production project area encompassed a square area comprising 20,000 acres, the ¼ mile halo would add **1,715 additional acres** for which an operator would be required to identify every surface owner, operator, lessee and unleased owner at all depths. Determining that title would cost many thousands of dollars and add countless man hours to preparing an application, particularly in East Texas areas that contain small tracts and fractured ownership. Moreover, giving notice to tract owners ¼ mile from the boundary of the brine production project area will not increase the protection of correlative rights because brine production wells and brine injection wells must be at least ½ mile within the project boundary, a distance meant to protect impacts beyond the project boundary. Accordingly, TerraVolta proposes the following changes where “area of review” has been used:

- 3.82(e)(3)(N) (for plats accompanying applications)
  - (ii), page 39, line 16 – replace “~~and tracts within the area of review~~” with “and the tracts adjacent to the brine production project area”.
  - (iii), page 39, line 18 – replace “~~and tracts within the area of review~~” with “within the brine field”.
  - (iv), page 39, line 20 – replace “~~and tracts within the area of review~~” with “within the brine field”.
  - (v), page 39, line 22 – strike “~~and tracts within the area of review~~”.
- 3.82(f)(2)(A) (Persons to Notify)
  - (i), page 41, line 28 – replace “operators on tracts ~~within the area of review~~” with “operators on tracts adjacent to the brine production project area”.
  - (ii), page 41, line 29 – replace “~~area of review~~” with “brine production project area and within the brine field”.
  - (iii), page 41, line 31 – replace “~~area of review~~” with “brine production project area”.
  - (iv), page 42, line 1 – correct the reference from subsection (e)(3)(N)(ii) to refer instead to (e)(3)(N)(v).

**3.82(d)(3)(A)** – *Application for new brine field designation.*

As currently drafted, Proposed SWR 3.82 requires a hearing for every new brine field designation. A hearing for every new field discovery is unnecessary because the Proposed SWR 3.82 has default field rules for new fields. Requiring a hearing for every new field discovery could delay an operator’s timeline for its project, inject unnecessary uncertainty into the project and add unnecessary cost. This requirement would also place an unnecessary burden on the Commission’s Hearings Division, which already has an extremely heavy caseload. TerraVolta proposes the following changes to 3.82(d)(3)(A):



- page 32, line 27 – delete the phrase “after a hearing”.
- page 33, line 33 – insert the following new subsection (ix):  
“(ix) The Director may administratively grant an application if all required data is submitted with the form prescribed. If the Director declines to administratively grant an application, or a protest is received within the timeframe specified by the notice, the operator may request a hearing.”

### **3.82(d)(4)(A) – Exceptions to spacing, density, and contiguity requirements**

Proposed SWR 3.82(d)(4)(A) requires notice and a “public hearing” for exceptions to spacing, density and contiguity requirements, regardless of whether a protest is received. Requiring a public hearing in situations where there has not been any protest filed would needlessly delay permitting, add costs to brine production projects, and, again, add unnecessary burdens to the Hearings Division. Because of the fractured nature of mineral title in East Texas, it is likely that operators will not be able to lease every single interest in every single tract within one-half mile of each brine production well, which means exceptions to the Proposed SWR 3.82’s spacing, density and continuity requirements will be commonplace. Similar to Statewide Rule 37, exceptions to spacing should be granted without the need for a hearing—if no protests are received after notice. The rule should provide sufficient guarantee of an **opportunity** for a hearing but need not require a hearing in every instance. Accordingly, TerraVolta proposes the following change to the Proposed SWR 3.82(d)(4)(A):

- page 34, line 30 – add the underlined phrases and delete the struck through phrases as follows:  
(A) An exception to paragraph (1) of this subsection or paragraph (2)(A)-(C) of this subsection may be granted after ~~a public hearing held after~~ at least 21 days’ notice to all persons described in subparagraph (B) of this paragraph. An exception to paragraph 2(F) of this subsection may be granted after ~~a public hearing held after~~ at least 21 days’ notice to all person described in subparagraph (C) of this paragraph. If no person entitled to notice protests the request for an exception, the Commission shall grant the exception administratively. Should the Commission receive a timely protest, the Director shall forward the request for an exception to the Hearings Division for adjudication. At a hearing on an exception, the burden shall be on the applicant to establish that an exception to this section is necessary either to prevent waste or to protect correlative rights.”

TerraVolta appreciates the attention of the Commission to these remaining important issues as you finalize the Proposed SWR 3.82. If you should have any questions, we can be reached directly at 303.619.5479, or via email at [nick@terravolta.com](mailto:nick@terravolta.com). Thank you.

Sincerely,

Nicholas Muscara  
VP, Land & Business Development  
TerraVolta Resources



cc: Office of Chairman Christi Craddick  
Office of Commissioner Wayne Christian  
Office of Commissioner Jim Wright