

October 15, 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 3.8 and Chapter 4, Subchapters A and B

Dear Rules Coordinator,

Merit Energy Company (Merit) is one of the largest private oil and gas operators in the United States, acquiring, operating, and developing high-quality, mature oil and gas assets.

First, Merit would like to thank the Railroad Commission of Texas (the Commission) for the work put into developing the proposed changes to current 3.8 that will makeup Chapter 4, Subchapters A and B. The Commission has thoughtfully proposed updates to a rule that has not been revised in more than four decades, and we applaud your efforts.

On behalf of Merit, please find below our comments regarding a specific aspect of the proposal related to the management and closure of Fresh Makeup Water Pits and the addition of Makeup Water Pits as Schedule A pits.

4.114(3) – Schedule A Pit Closure; Fresh Makeup Water Pit Closure Exception

Fresh Makeup Water Pits are often used over long periods of time and many landowners do not prefer that an operator build, tear down and rebuild fresh makeup water pits on their land if they are being used simply to store freshwater. Also, Fresh Makeup Water Pits can be utilized by multiple operators in an area eliminating further land disturbances using temporary poly lines and pumps or vacuum trucks to transfer water to a nearby drill wells, completions, recompletes, and other well workovers. The oil and gas industry has proven to be innovative and continues to develop new technologies which can bring back development to old fields. If the pits do not pose an environmental risk, are being monitored, and has the landowner's blessing, it would be a waste to be forced to close and reclaim.

While freshwater in Fresh Makeup Water Pits will increase in TDS over time, it is reasonable that an operator should be able to manage the TDS of the pit and keep it open so long as the water in the pit does not exceed groundwater in the area.

Merit recommends a threshold of 5,000 TDS in the pit because it is on the lower end for the Permian Basin region, and also the level at which the pits may be closed, in place, without doing much more under current requirements. Including "the higher of" 5,000 ppm or the TDS levels reported in the closest publicly available Groundwater Database (GWDB) Report allows us to define the "local" area. It is important that it is "the higher of" rather than "the lower of" because some public supply wells are very

deep, not completed in the same “groundwater zone” – so the “higher of” is there to protect against that, if there is both a shallow and a deeper source of drinking water in the area, and one is higher in salinity than the other.

See suggested language below:

(E) A lined authorized fresh makeup water pit may continue operating beyond the closure timelines set out by this division, subject to the following:

(i) such fresh makeup water pit is otherwise designed, constructed, and maintained to prevent the migration of materials from the pit into adjacent subsurface soils, groundwater, or surface water during the extended life of the pit, including a liner system for Schedule A Pits, as required by §4.114 (2) of this title.

(ii) the operator of such qualifying fresh makeup water pit shall submit to the District Office a copy of the surface use agreement or other proof of lease or contractual authorization for the continued use of such pit.

(iii) the operator of such qualifying fresh makeup water pit shall submit annual reports of local groundwater quality and an annual lab water quality analysis of pit contents to the District Office for the duration of extended pit use.

(iv) Provided that the following criteria are met, no further action will be required to continue qualifying fresh makeup water pit operations:

(a) Area groundwater total dissolved solids (TDS) levels remain within 20% of originally sampled values.

(b) Pit content TDS levels do not exceed 5,000 parts per million (ppm).

(c) In the event that the above limits are exceeded, the operator shall have 180 days to either (a) re-test and submit to the District Office test results within acceptable range; or (b) inform the District Office of its intent to close the pit according to this division, and complete such closure no later than 180 days after informing the District Office of such decision.

4.114 – Schedule A Authorized Pits; Add Makeup Water Pits

Industry sources water from brackish or saline groundwater aquifers to reduce use of fresh water. To do so, industry needs to store water that is well above 3,000 mg/l and prohibited from storage in fresh makeup water pits per the current draft. These pits typically contain brackish and saline water sources or blended water sources.

The Commission should create an additional type of Schedule A pit, referred to as a Makeup Water Pit. Makeup Water Pits would be authorized to contain surface or subsurface waters with total dissolved solids exceeding 3,000 mg/l. A Makeup Water Pit could be defined as:

“A pit used in conjunction with a drilling rig during drilling, completion, recomple operation, or remedial well work for the storage of non-fresh water exceeding 3,000 mg/l used to make up drilling fluid or completion fluid.”

Makeup Water Pits should be included in regulations under 4.114(1)(F), (2)(B), (3)(A), (3)(A)(iv).

Makeup Water Pits should also be provided an exception to closure as suggested for Fresh Makeup Water Pits above.

Merit appreciates the attention of the Commission to these remaining important issues as you finalize the rule. If you should have any questions, please reach out to Chris Heavner via email at chris.heavner@meritenergy.com. Thank you.

Sincerely,



Chris Heavner
Merit Energy Company

cc: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright