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April 29, 2022 Oil and Gas Strategic Plan Comments Oil and Gas Division Railroad Commission of Texas
P.O. Box 12967 Austin, Texas 78711-2967 Submitted via online portal and also sent through mail

Dear Commissioners:

The Lone Star Chapter of the Sierra Club is pleased to offer these brief comments on the Texas Railroad Commission's draft Annual Oil and Gas Division Monitoring and Enforcement Plan for the 2023 Fiscal Year. We would note as we have in previous years, that this enforcement plan is limited to oil and gas activities, but the Commission should consider also publishing an annual monitoring and enforcement plan for pipelines and pipeline safety, even though there does not appear to be a statutory requirement to do so.

We are in agreement with the two basic goals of this plan, "to accurately demonstrate the Commission's oil and gas monitoring and enforcement activities;" and "to strategically use the oil and gas monitoring and enforcement resources of the Commission to ensure public safety and environmental protection," and appreciate the new action items related to documenting an inspector's responsibilities, disseminating study data related to revenue fees and flaring data, and especially the attention to orphan wells including federal funding.

While we are in agreement with these goals and actions, we are concerned that the current draft plan may not effectively ensure that these goals are met. We offer the following comments to identify areas in which the monitoring and enforcement goals could be better met.

I. The Railroad Commission should set more aggressive goals for the number of inspections conducted during the year. The Railroad Commission ("RRC") reports in the draft Annual Oil and Gas Division Monitoring and Enforcement Plan for the 2023 Fiscal Year ("draft plan") that, "[t]he Commission will inspect at least 88,000 wells during fiscal year 2023 to meet the performance target for inspection frequency. With all the oil and gas wells in Texas inspected within the previous five years by the conclusion of fiscal year 2021, in fiscal year 2023 the Commission will return to those wells inspected earlier in the five year cycle.

[1] While there have been improvements made over the last decade to increase the number of inspectors and inspections, that growth is not shown in the inspection goals in the FY 2023 Plan. In the Fiscal Year 2021 Annual Oil and Gas Division Monitoring and Enforcement Plan, the RRC's annual well inspection goal was 100,000 wells, twelve percent more than the number planned for Fiscal Year 2023, and also less than the 90,000 goal set in Fiscal Year 2022.

[2] While the RRC has exceeded the well inspection goals in previous years, lowering the baseline goal is counter to the goal of inspecting each well and facility regularly. Additionally, inspecting onshore wells and facilities only once every five years is too low of a goal for the Commission, even if the Commission anticipates exceeding this goal. The RRC should commit to conducting a more robust inspection regime, such as inspecting wells at least once every four years.

With the addition of new technologies, like the drone usage discussed in previous reports, and the potential for more federal money from the Bipartisan Infrastructure Bill, more inspections should be able to occur annually. If, in addition to these new resources, the current appropriated FTE level of

approximately 281.9 for the oil and gas monitoring and inspection strategy is too low to meet this goal, the RRC should request an increase in its annual budget to hire more inspectors to meet this schedule. It would be useful in the report to detail how many inspectors are actually currently in employment at the agency in addition to providing information on how many could be employed by the agency.

II. The Railroad Commission should provide more disaggregated data available to the public, including data on major violations, comments, and flaring.

More detailed enforcement data is available and should be made available both in the Annual Monitoring and Enforcement Plan and available online to the public. Basic aggregated data on enforcement has disappeared from the RRC website, and the agency has insufficient disaggregated data in the FY 2023 Annual Oil and Gas Division Monitoring and Enforcement Plan. The draft plan does not provide sufficient information on violations that occurred the previous year nor in the preceding years. For example, the draft plan states that the Commission did not identify any repeat major violations during fiscal year 2021.[4] However, no information on repeat major violations prior to 2021 is included.

Appendix B of the draft plan defines a Major Violation to be one in which there is "a safety or pollution related violation that causes a significant impact to public safety and/or the environment, is accompanied by conditions that indicate a significant impact to public safety and/or the environment is imminent, or is the result of deliberate disregard of Commission rules and regulations related to public safety or environmental protection." [5] Given the severity of what is considered a major violation (e.g., drilling a well without a permit, surface management of waste without a permit, operation of a disposal or fluid injection well without a permit, etc.), more comprehensive data should be provided to the public on repeated major violations within the past seven years, rather than just the preceding year.

As required by the Texas Natural Resources Code, the Commission is required to show the oil and gas monitoring and enforcement activities over time.[6] However, the draft plan, as well as the plans from previous years, only shows monitoring and enforcement data for the previous fiscal year, making comparisons difficult. Having a chart showing year to year enforcement data would be useful for the public and the Legislature. We would also note the report does not have any information on severance actions taken.

We appreciate that the plan this year does include more detailed information on complaints and the complaint resolution process than in previous versions. Still, in addition to the new complaint data, the report should state total penalties levied per violation and violation type, and repeat violations going back seven years. The draft plan only includes the number of oil and gas complaints received and the number of oil and gas complaints resolved within the last year, which in 2021 was between 400 and 500.[7] The RRC Complaint webpage is also similarly lacking in information. Unlike the TCEQ, which logs complaints and publishes them anonymously, the RRC handles complaints at the field office level. The appendix does outline the complaint procedures, but little actual information or data within the draft plan is focused on complaints.

With twelve oil & gas office locations throughout the state and no online database of complaints available to the public, the complaint process lacks transparency. The RRC needs to include more detailed complaint data within the draft plan at a minimum, including complaint totals per district, number of formal and informal complaints, and information on complaint resolution.

Finally, the RRC should consider updating and improving inspections and policy around flaring and providing more information in the enforcement report itself. Again, we recognize that the report does state that the Commission will be sharing more data in the future on its new flaring data efforts. Still, a trillion cubic feet of natural gas in the Texas Permian Basin has been flared since 2013 according to a recent study.[8] A recent report commissioned by the Environmental Defense Fund indicates that it is likely that flaring will return to pre-pandemic levels by 2025 as drilling and production resumes.[9]

While the RRC has taken steps over the last two years to better regulate flaring and measure the amount of flaring, those steps are very recent with no data available on impacts to flaring levels in the state as a result of these changes.[10] The RRC should include data outlining monitoring and enforcement strategy for flaring within Texas, as well as further goals and actions that the Commission will undertake to regulate flaring.

III. The Railroad Commission should include plans to update the minimum penalties for violations.

In addition to more comprehensive data, the draft plan should encourage the Commission to review and update the RRC's penalty matrix, and other aspects of the RRC's Statewide Rule 107, Penalty Guidelines for Oil and Gas Violations.[11]

With regards to penalties, the RRC should increase its penalty matrix so that fines and penalties incentivize polluters to update and maintain their facilities.

The draft plan outlines the number of violations during the 2021 Fiscal Year, per rule by subsection.[12] From reviewing the high number of violations related to prohibited disposal methods into watercourses and drainage ways, failure to plug, and to report the location and existence of infrastructure, it seems obvious that penalties are too low to deter violations.

Simply put, the Commission's penalties for pollution violations are far too small to ensure compliance and deterrence of future lawbreakers. Small fines for operating without a permit, for example, means it becomes part of the cost of business for oil and gas companies, and it is time to revise the level of fines both at the Commission, and at the Texas Legislature, which should raise the maximum penalties last adjusted in 1983 from \$10,000 to \$25,000.

Legislation filed in 2021 in both the Texas Senate (SB 1516) and House (HB 1043) has sought to address this issue. We call on the RRC to take similar steps to those outlined in the legislation to increase the minimum level of administrative penalties that may be imposed by the RRC for various permit violations. The Commission should address this as part of this annual report, and set a goal to review its penalty matrix and consider updates through a public process.

IV. The Railroad Commission should provide more comprehensive outreach to Limited English Proficiency populations. The draft plan and outreach by the Texas Railroad Commission needs to address the existence and needs of Limited English Proficiency (LEP) populations within Texas. A Limited English Proficient (LEP) individual is someone who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English.[13] Other agencies within Texas, like the Texas Commission on Environmental Quality, include alternate language resources for LEP individuals including translated regulatory guidance publications, translated webpages, and guidance on how to submit complaints, problems, and participate in the environmental permitting process.[14] This is particularly important because Texas has an LEP population of 14 percent.[15] Some regions of the

state directly impacted by oil and natural gas extraction, such as the counties in the Eagle Ford shale region of South Texas, have significantly higher LEP populations, with percentages as high as 36 percent.[16] Providing this plan in an accessible format, such as offering the plan and other RRC data in Spanish, would enable LEP individuals an opportunity to stay informed of RRC enforcement and monitoring strategy, as well as create an opportunity for more meaningful engagement.

V. The Sierra Club appreciates the new proposed actions on orphan wells, but believes there should be an opportunity to suggest changes to the prioritization scheme for federal funding. The draft plan rightly emphasizes the need to take action on orphan wells, both under the state-managed program, but also under new federal funds created at the Department of the Interior as part of the Bipartisan Infrastructure Bill. However, the Commission is proposing to use the exact same prioritization scheme for the federal program as the state-managed program, even though federal guidance is forthcoming. Based on initial comments provided by DOI, we know that the federal money may well require an analysis and prioritization of wells that impact certain disadvantaged communities, and yet the RRC rules related to well plugging prioritization fail to consider this aspect. An example could be the use of the EPA EJ Screening tool as an additional measure to prioritize the clean-up of wells located near overburdened populations. In addition, the plan fails to address how the Commission may consider the measurement of methane pollution or groundwater or surface water impacts, which may be important to accessing future federal funds under the Infrastructure Investment and Jobs Act (IIJA) of 2021. The commission should add some language to the plan about how it may amend its prioritization based on federal guidance and stakeholder input. That being said, we do appreciate the publication of the Commission's plan and prioritization scheme.

VI. The Railroad Commission should provide more stakeholder outreach opportunities. More opportunities for stakeholder engagement, both with regard to this plan as well as for general matters, should be provided by the RRC. While the draft plan outlines educational opportunities for industry operators about Commission rules and processes, including presentations at industry events and regulatory forums, the stakeholder participation process is almost entirely digital and only focused on publication of this draft plan, as required by the 85th Legislature House Bill 1818. Additional forums and meetings should be directed towards stakeholders impacted by the oil and gas industry, including educational opportunities on how to file complaints, the role of the Railroad Commission as a regulatory authority in Texas, and further opportunities for stakeholder engagement.

Furthermore, the RRC should provide information on how the draft plan is created and public comments considered and implemented into the annual plan. As required by HB 1818, the Oil and Gas Division Monitoring and Enforcement Strategic Plan requires the RRC to "seek input from stakeholders when developing each annual plan." [17] However, there is no publicly available information that outlines how the RRC incorporates stakeholder comments, suggestions, and critiques from the draft plan into the final plan. Given that the window between the deadline for comments, April 29th, and the date that the RRC must publish the final plan, July 1st, is approximately three months, the RRC should outline how comments from stakeholders will be incorporated into the final plan. Additionally, the RRC should make available the comments submitted on the draft plan or outline the content of submitted comments, rather than simply listing the number of comments received within the final plan.

VII. The Railroad Commission should further implement new technology when monitoring wells and facilities. The Sierra Club is supportive of the action items that implement new technology, such as

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drones, to assess leaks and spills. However, this plan fails to mention that strategy, even though it was part of an important effort in 2021 that led to some initial efforts to use drone technology to find leaking infrastructure. Given that this plan was created due to a directive by the Texas Legislature "to assess the most effective use of [the Railroad Commission's] limited resources," this technology is an ideal method of increasing effective monitoring at large or hard to reach locations. The use of drones for visual inspections of leaks and spills, as well as evaluating emergency situations, should be further implemented within the RRC monitoring program. However, more data should be collected and provided to the public in the annual draft plan on this type of inspection method, including number and type of site inspected by drone, percent of drone inspections resulting in violations, and data collected via drone versus on-site inspector collection. If the Commission failed to conduct such inspections in 2022, then it should state so, and what plans it has in 2023 to use this technology.

VIII. Conclusion We thank you for the opportunity to submit comments on the Railroad Commission draft Annual Oil and Gas Division Monitoring and Enforcement Plan for Fiscal Year 2023, and welcome the opportunity to discuss these comments, as well as participate in public engagement opportunities, such as public hearings focused on this plan. Please feel free to contact the Sierra Club with any questions.

Respectfully submitted April 29, 2022.

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