September 30, 2026

Ms. Anna Johnson
Director of Communications and Legislative Affairs
Louisiana Department of Conservation and Energy
Via email to cerulecomments@stateofla.onmicrosoft.com

Re: C&E Seeks Public Input on Groundwater Regulations

Dear Ms. Johnson:

On behalf of the Tulane Institute on Water Resources Law and Policy (the Institute) we are submitting these comments related to the promulgation and repromulgation of rules pertaining to the management of groundwater by the Department of Conservation and Energy (DCE). Please note that these comments do not purport to be those of Tulane University, Tulane Law School, or any other persons, academic units, or programs at the university.

I. General Comments

We would like to begin by noting that the proposed regulations are a welcome development, taking much needed steps to update, clarify and consolidate the rules governing the State's groundwater management responsibilities. While the task will likely never end, we greatly appreciate the thought and effort that have gone into drafting the proposed regulations. We also applaud the Department for the amount of time it is allowing the public to digest, discuss and comment on the proposal. This is no small undertaking, and it will benefit greatly from informed public deliberations.

Much of the content of the proposed regulations can be described as housekeeping, reflecting the reorganization of the prior Louisiana Department of Energy and Natural Resources into the DCE and the absorption of the roles of the now defunct Capital Area Groundwater Commission. We will comment on specific aspects of that effort below. There is, however, a major new feature in the proposed regulations—the creation of Areas of Investigation that are separate and apart from the concepts of Groundwater Area of Concern and Critical Area of Concern. This inclusion will give the DCE much needed capacity to identify ground water management issues and to begin formulating ways of forestalling serious problems and conflicts.

This is a much-needed addition, though as we will discuss below, the DCE will almost certainly need more authority to act. The simple fact is the state's current approach both places too great a burden on well owners and waits too late to allow anyone to initiate stewardship measures.

The data and information needed to inform such efforts will require new resources and long-term investment in workforce and programs. Though not a specific matter raised in the scope of this proposed rule, DCE's capacity to support enhanced oversight and management of groundwater resources is an important concern that must be addressed. This is especially true given the potential need for regional groundwater oversight to support statewide groundwater resource management.

II. Specific Comments

Chapter 1, Section 103, Definitions. Most of the definitions appear to be carefully thought through or are carry overs from previously issued regulations. Several, however, raise questions or concerns that we believe warrant more attention. These are discussed below.

Abandoned Well. This is a new definition that addresses an important issue. It describes a well as being abandoned when (among other things) its use has been "permanently discontinued" or the pumping equipment has been "permanently removed." The idea behind this makes intuitive sense, but it is not at all clear what will constitute "permanently discontinued" or permanently removed." Given Louisiana's longstanding problems with legacy infrastructure, any imprecision about what constitutes abandonment will foster confusion, conflict and delay. An example of how that can be improved is actually found elsewhere in the proposed rule. Section 907 J. 3. goes into much more detail about when a pilot or test hole will be deemed abandoned. This only makes more glaring the omission of a general definition of what will constitute permanent discontinuance or permanent removal of equipment.

Drought Relief Well. The justification for drought relief wells is apparent, and these wells are almost certainly going to be more needed in the future. What is not apparent is why they are limited to agricultural use, nor is it clear what the qualifying term "agricultural use" is meant to convey. Conventional notions of agriculture, as the terrestrial use of land to produce food is no longer apt. Is growing corn for biofuels an agricultural undertaking or an energy production activity? A policy favoring the production of food for people and animals is one thing, but a policy favoring all plant-based products and uses is quite another. This rule should be clearer about the preferences it is granting, and why.

Flood Prone Area. The intention of this definition is clear, but its terminology is not. Although the term "100-year flood" may be commonly used, it is not precisely used in this definition. For flood insurance purposes, the metric is a "one in one hundred year" event. The terms are not synonymous.

Hole. The proposed rule has definitions for both "bore hole" and "hole." The latter is defined with a cross reference to bore hole. Only the bore hole definition seems necessary. Why not simply use the one term?

Inactive Well. This definition identifies a well as "inactive" if it is "not presently operating" but is maintained in a condition that it could be put back in operation with a "minimum of effort." As with other definitions, the intent behind this seems clear, but what it actually means is anything but clear. It is not clearly reconcilable with the definition of an abandoned well, especially if the well could be a potential source of groundwater contamination. The requirement that the well not be "presently operating" is vague and imprecise as is the meaning of "minimum of effort." Practically, it is hard to imagine how DCE would even come to be aware of such a well, much less whether it could be reactivated with a minimum effort. We believe this needs further work.

Owner. This is not a new definition, but it could benefit from some additional refinement. Specifically, the definition includes not only registered well owners, but that where there is no clear owner, one of these persons will be deemed to be the owner: the property owner of the land where the well or proposed well is located, the person holding a long term lease on the property, or a person who otherwise who has the legal right to drill or operate a well on the property where the well is located (or we presume is to be located). Since only one of those will be deemed the owner, it is not clear who would be considered the owner when more than one qualifies—a very likely situation. In that case, who makes the call, and what are the criteria?

Registered Permit Plat. The definition contains a reference to the Office of Conservation. Shouldn't this be changed to DCE?

Chapter 1, Section 107. We appreciate that there may be circumstances that may justify the grant of a variance by the Department, but the language in the proposal to potentially allow a variance "where compliance with the rules, regulations, and standards" in the Chapter is "impractical" is both vague and imprecise. The standard for seeking and receiving a variance should be both higher and more specific. At a minimum, it should not be allowed in cases where the variance sought relates to the requirement that a use be beneficial and pursued reasonably.

Chapter 3, Section 301 A and 303. This Chapter deals with Areas of Groundwater Concern, and this section sets out who may apply to have an area designated as such. Given the growing demand—and stress—on our water resources, it would be prudent to consider revisions to this section. To put it simply, if an aquifer in trouble can only be designated an area of concern upon the application by a well owner who has been "significantly and adversely affected" by the listed conditions, then it is unlikely our groundwater resources can be well stewarded. Though a well owner certainly should be able to initiate an application, it is unclear why the fate of our groundwater should depend on that. Indeed, the requirement that a well owner demonstrate that they have been significantly and adversely impact is so imprecise and subjective as create confusing barriers to the state's ability to identify problems that warrant prompt attention.

Similarly, the existing requirement of Section 303 that an applicant must provide a statement that "incentives to reduce groundwater use may be implemented" if the Secretary determines that the area warrants the designation as a critical area of concern hardly seems related to the merits of an application. Indeed, if the point of this Chapter is to safeguard our groundwater resources, what purpose is served by so restricting who can bring the matter to the state's attention?

Chapter 3, Section 305 C 1. Application for an Emergency Hearing. Emergency situations call for emergency measures, as this section recognizes. However, if there is such a situation, it is unclear why the Secretary can only convene a hearing on his or her own motion in cases other than those related to drought emergencies requiring the temporary use of drought relief wells. The use of drought relief wells may be an aspect of a water emergency, but it is hardly the measure of that emergency. It is not clear why this limitation is imposed.

Chapter 7, Water Well Notification and Registration Requirements. This Chapter has been changed to include registration requirements that are applicable to most wells and clarifies that wells that are typically exempt must still be registered when in a Critical Area of Concern. This is a useful change. However, it is not clear why notice and registration for those wells in 701.A. are not also required in Areas of Concern or Areas of Investigation. The clear purpose of the amended chapter is to provide the Department with notice of planned drilling activities in areas already flagged as troubled and since, one presumes, the Department has a responsibility to try to prevent aquifers from reaching Critical status is counter intuitive to exempt wells in Areas of Concern and Areas of Investigation.

Chapter 7, Section 709. Areas of Investigation. This Section is a new and significant addition to the Department's regulations, and it is much needed. Previously, action to safeguard an aquifer depended on a well owner formally bringing the matter to the Department's attention. That is an unrealistic expectation, and the proposed rule takes an important step by allowing the Secretary to establish an "area of investigation" on his/her own motion or at the request of a groundwater conservation district, local governing body or agency, or another state agency in which area the Department may carry out various investigations into the condition of an aquifer and its uses. This is a much-needed change, but it does not go far enough. It is fine that the Secretary communicate the conclusions of an investigation to the legislature, affected local political subdivisions (which is inexplicably narrower than the list of entities that may request and investigation) **or** that he/she notify affected well owners of their right to petition for the area to be declared an area of groundwater concern, but that still can leave an acknowledged problem unattended. We suggest that if the investigation reveals sufficient cause for concern that the Secretary be allowed to initiate the process of designating an Area of Concern or an Area of Critical Concern. Perhaps the Department does not feel it is authorized to go further, but further it will ultimately have to go.

Chapter 9, Section 907 J 3. This section deals with when the "temporary" suspension of drilling of a pilot hole will be treated as an abandonment of the hole. We have no comment on the actual language of the section but note that it does not seem consistent with Chapter 1

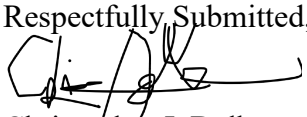
Section 103's definition of an abandoned well, as we noted with respect to Section 103's the use of terms such as "permanent" and here of "temporary." At the very least, it would be helpful if the two sections were consolidated to minimize confusion.

Chapter 11 Section 1107 C. Destroyed Wells. This Section deals with the plugging of inactive or abandoned wells, with Subsection C specifically dealing with Destroyed Wells. Essentially, it provides that if a well cannot be located it will be considered to be plugged and abandoned, provided sufficient information exists to quantify as abandoned under Chapter 1 Section 103. The section introduces the concept of a "destroyed well" but adds no definition of the term or why it matters beyond what is already provide with respect to abandoned wells.

Chapter 13, Special Regulations for Statutorily Defined Management Areas. This portion of the proposed rule deals with the Department's assumption of responsibilities following the dissolution of the Capital Area Groundwater Commission. Most of the other sections of this proposed rule have focused on ministerial or prospective responsibilities, whereas this chapter deals with the DCE's present and active duties to manage the groundwater resources of the Capital Area. This is a major step for DCE, and one that will require the collection of data and the management of water use and aquifer health unlike any in its experience. It also probably presages roles that the Department will need to play in other parts of our state. This proposal makes reference to its authority to require metering in the Capital Area, but the Department must be clear in communicating and exercising this authority to prevent further setbacks in oversight and monitoring. Rather than wordsmith the chapter, we feel it would be best to follow the Department's experience in this new role and to offer any assistance that might be helpful as it undertakes what may be the most important chapter in Louisiana's natural resources management history.

The Institute appreciates the opportunity to review the proposed rule and provide these comments. We would be happy to discuss any of them or any related matters with the Department.

Respectfully Submitted,



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