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December 2, 2024

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

RE: Draft Rules for Formal Comment, Amend various rules in Chapter 3 and new §3.82, Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells

Dear Rules Coordinator,

This firm represents Standard Lithium, Ltd. (SLI), a leading near-commercial lithium development company focused on the development of a portfolio of lithium-brine bearing properties in the United States. SLI prioritizes brine projects characterized by high-grade resources, robust infrastructure, skilled labor, and streamlined permitting. SLI has identified a number of highly prospective lithium-brine project areas in the Smackover Formation in East Texas and has begun an extensive brine leasing program in the key project areas.

First, SLI would like to acknowledge that the Railroad Commission of Texas (the Commission) has put a significant amount of work into developing the proposed changes to Chapter 3, Title 16, of the Texas Administrative Code to provide the regulatory framework needed to bring commercial, Class V brine mining to Texas. We greatly appreciate the many discussions the agency has had with industry and other stakeholders who will be impacted by this rulemaking. The Commission has very thoughtfully proposed rules to guide our nascent industry, and we applaud its efforts.

On behalf of SLI, please find below our specific comments regarding the formal proposal.

1. **3.82(b)(1) (Page 24 of 57)**[1] — SLI has reviewed a draft comment from another interested party suggesting that the proposed rule's definition of "affected person" should be changed to conform to definitions of that term in the Commission's other rules. SLI strongly disagrees with this comment. The Commission has liberally construed "affected person" in its disposal well rules generally to allow any nearby party that articulates potential harm to qualify as an affected person. That interpretation is in tension with the text of those

[1] The page references in this letter are to the PDF version of the proposed rules found on the Commission's website, not the version published in the Texas Register.

rules, which does not recognize potential harm as a possible ground for "affected person" status, leading to unpredictability in applying the definitions. SLI believes the Commission's proposed definition of "affected person" in new 16 Tex. Admin. Code § 3.82(b)(1) is superior, because it closely tracks the modern test used by the Texas Supreme Court to determine questions of standing under the Texas Constitution:

> To satisfy standing's requirements, the alleged injury must be concrete. *Heckman*[*v. Williamson County*], 369 S.W.3d [137,] 154–55 [(Tex. 2012)]. Plaintiffs must allege "threatened or actual"—not hypothetical—injuries. *Farmers Tex. Cnty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 241 (Tex. 2020). The U.S. Supreme Court has observed that a substantial risk may satisfy the concrete-injury requirement for injunctive relief, if that risk is based on a reasonable inference from specifically alleged, current facts.

Grassroots Leadership, Inc. v. Tex. Dept. Family & Protective Svcs., 646 S.W.3d 815, 820 (Tex. 2022) (per curiam). SLI believes the proposed definition of "affected person" in 16 Tex. Admin. Code § 3.82 would be more predictable, easier to apply, and better at distinguishing between parties with a real interest in the proceedings and parties with merely hypothetical grievances than the Commission's existing definitions of the same term. These improvements are important given the much larger size of brine mining projects compared to other types of Commission applications, a disparity that has the potential to result in many more frivolous protests in the former than the latter in the absence of a well-drafted standing rule.

2. **3.82(d)(2) (Page 32 of 57) —** The prohibition on double assignments of acreage applies only to acreage assigned to a *well*, not acreage assigned to a *project area*. Assignment of acreage to wells is optional (because many brine production wells will be drilled closely together, meaning a requirement to assign acreage would result in odd gerrymanders). As a result of assignments of acreage to wells being optional (a feature of the proposed rule SLI wholeheartedly supports), it is possible under the proposed language for the Commission to issue permits for two different brine projects operated by different companies that include undivided interests in the same acreage. The proposed rules provide no guidance about what happens in a such a situation.

   Suppose the first project operator to drill a well assigned the overlapping acreage to it. Could the operator of the second brine project drill its own well inside the overlapped area and (assignment of acreage being optional) not assign acreage to it? That approach would avoid the letter of the prohibition against double assignment of the same acreage to more than one well, but not the spirit of the prohibition, which is to prevent waste by ensuring proper pressure management within each project area by having a single operator manage it. Similarly, if there were an existing well in an overlapped area whose operator had not assigned any acreage to it, could assignment of that acreage to a second well drilled nearby by a different operator have the effect of transferring operatorship of the first well?

SLI suggests that the Commission resolve this ambiguity in the proposed rule by providing that, once acreage is assigned to a well in one project, it must be drawn out of all overlapping projects. SLI further suggests that the language adopting that approach clarify that such a required redrawing of a project's boundaries would not be considered so major a change as to amount to a permit amendment.

3. **3.82(d)(3) (Page 32 of 57) —** The proposed brine field designation rules state that "[a] new brine field designation may be made by the Commission after a hearing after notice to all operators . . . ." SLI reads this proposed rule to require a hearing before every new brine field is recognized. SLI believes requiring a mandatory hearing for every brine field designation would result in many unnecessary hearings. SLI expects most field designations to be uncontroversial. Accordingly, SLI suggests that this language be modified to allow Commission Staff to approve new field designations administratively, like the process already found for oil fields under 16 Tex. Admin. Code § 3.41, with an opportunity for hearing only if Staff denies the designation or an operator who receives notice protests.

4. **3.82(d)(4)(A) (Page 34 of 57) —** The way SLI reads this proposed provision, every exception to a spacing, density, or contiguity requirement must go to a hearing. SLI anticipates most brine production project areas will exceed 10,000 acres, with many in excess of 20,000 acres, and some in excess of 30,000 acres. Given the large size of these project areas and the difficulty of leasing all the undivided mineral interests contained within their boundaries, the proposed rule as it is currently drafted would require potentially hundreds of unnecessary hearings per project. SLI expects most spacing, density, and contiguity exceptions to be uncontroversial, routine matters. Accordingly, SLI requests that the language of this rule be modified to make the exceptions process work like that presently found in 16 Tex. Admin. Code § 3.37, under which notice is given to all owners within the area affected by the particular exception sought and the exception is automatically granted if no protest is received within a set time period.

5. **3.82(e)(3)(N)(v) (Page 39 of 57) —** Because the "area of review" includes a quarter-mile halo around the project area boundaries, this provision will require the plat to identify owners not included in the project. As discussed in the preceding comment, these projects are likely to be very large, and the added burden and expense of performing the title examination needed to determine all of the owners within an extra quarter-mile beyond the project boundaries is substantial. The default spacing rule requiring project wells to be located a half-mile from the project boundaries means that the effect of the project on surrounding landowners of all classes will be *de minimis*, if not wholly non-existent. The huge volumes of brine that must be produced in a commercial brine mining operation preclude trucking as a means of transportation, meaning that truck traffic will not be a concern for these projects in the way that it can sometimes be in Class II commercial disposal well permit applications. Accordingly, SLI requests that the language of this rule be modified to require the plat to reflect only owners located inside the project boundaries.

6. **3.82(f)(2)(A) (Page 42 of 57) —** This proposed provision seems to have a broken reference (it looks as though it meant to refer to "subsection (e)(3)(N)" or "(e)(3)(N)(v)" instead of "subsection (e)(3)(N)(ii)"), but appears intended to require giving individual notice to all owners included on the plat. As discussed in the preceding comment, that would include owners who are not only not part of the project, but also highly unlikely to be affected by it in any material way. Given that the statewide spacing rule is that wells be at least a half-mile from the outer project boundary, the expense of running title to comply with this requirement greatly outweighs its anticipated benefit. SLI asks that requirements to give direct notice to persons outside the project area be limited to situations where a spacing, density, or contiguity exception is requested and that newspaper notice be the exclusive means of notice to persons located outside the project area whose rights are not implicated by an exception request (for which separate, individual notice would be required already under the exception rules).

7. **3.82(g)(2) (Page 44 of 57) —** SLI suggests clarifying the process by which an operator may notify the Commission regarding the addition of undivided interests or new acreage within the existing exterior boundaries of a brine production project. Such additions are likely to occur over the lives of projects as operators pursue additional leases to eliminate the need for internal spacing, density, and contiguity exceptions. SLI agrees with the present text of the proposed rule that minor additions of this kind should not require amendment of the project permit.

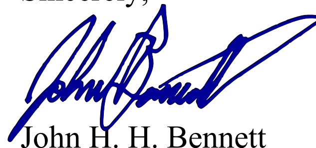
8. **3.82(h)(2)(D) (Page 45 of 57) —** SLI believes the Commission meant the text of the proposed provision to be "specific date" instead of "specific data".

9. **3.82(i)(18) (Page 49 of 57) —** SLI believes fire walls are unnecessary in brine production projects unless hydrocarbons are being stored onsite. SLI suggests restricting this language to dikes in the absence of flammable materials.

10. **3.82(j)(7)(J) (Page 54 of 57) —** SLI suggests modifying to avoid confusion the proposed language that states "[a] written plan to restore mechanical integrity shall be submitted to the Director within 15 days of the failure of mechanical integrity." SLI suggests this language be modified to read "A written plan to restore mechanical integrity shall be submitted to the Director within 15 days of <u>obtaining test results indicating</u> the failure of mechanical integrity." This change would provide certainty to the operator and the Commission regarding the timing of the required notification.

SLI greatly appreciates the work of the Commission in addressing these important issues. If you should have any questions, I can be reached directly via email at *john@texasenergylaw.com*.

Sincerely,



John H. H. Bennett

cc: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright