



Lone Star Chapter

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Written Comments in Favor of HB 2225 by Chairman Tracy King – Submitted to the House Committee on Natural Resources on March 23, 2021 by Ken Kramer, Water Resources Chair, Lone Star Chapter of the Sierra Club

The Lone Star Chapter of the Sierra Club represents over 29,000 Texans interested in the protection and enjoyment of our state’s natural resources, including especially Texas water resources. We have been actively involved in Texas state water policy since our establishment as a separate chapter of the Sierra Club in 1965.

A priority issue for our Chapter has been the effort to maintain instream flows in Texas rivers and streams and freshwater inflows to our state’s coastal bays and estuaries. These flowing waters are critical for maintenance of aquatic and marine habitats that sustain a diversity of fish and wildlife which make Texas rich ecologically and economically. Moreover, our stream flows protect water quality, provide recreation that contributes to our quality of life and our vibrant tourism industry, support our commercial fishing industries, and preserve areas that have been central to the lives of our people, including indigenous peoples, for centuries.

However, attempts to maintain instream flows and freshwater inflows through state water policy often have been like trying to swim upstream against a strong current. Although some strides have been made over the last four decades or so, the rights to most surface water in the state were issued before the officials issuing water rights were required to even consider the impact of new consumptive rights on “environmental flows.” Certainly, surface water is needed for important agricultural, industrial, and municipal uses, and we must continue to meet those needs. However, our natural environment also needs water, and the flows in our rivers and streams are being put at risk as we put more consumptive demands on their use.

As a result, creating voluntary mechanisms for protecting flowing waters for environmental purposes and making those mechanisms effective is key to achieving a balance in our use of water in Texas to meet important needs, including environmental needs. One of those

mechanisms is the Texas Water Trust, established in 1997 as part of Senate Bill 1. The Trust was established within the existing Texas Water Bank as a means by which holders of water rights could set aside all or part of their rights – either in perpetuity or for a designated period of time – to allow water to remain flowing in streams or perhaps provide releases of water to a stream at critical times.

The potential value of a voluntary mechanism like the Water Trust became even clearer in 2003 when the Texas Legislature for a variety of reasons explicitly prohibited the state agency which issues water rights – the Texas Commission on Environmental Quality (TCEQ) – from issuing any new water right for instream flow purposes. A person may apply for a water right for consumptive uses and certain other “beneficial uses” but not for maintaining flows in a stream. The holder of an existing water right may seek an amendment from TCEQ to change the purpose of use of that right to instream flows, however. Indeed, to put a water right into the Water Trust requires an amendment by TCEQ to convert that right to instream uses.

Senate Bill 3 in 2007 set up a complex process for developing “environmental flow standards” that any new consumptive use water right would have to meet, important in reducing additional negative impacts on flows from new rights. But it did nothing to address the impact that the huge volume of water that may be withdrawn under previously issued rights will ultimately have on environmental flows when those rights are fully exercised. Again, we must rely on voluntary mechanisms like the Water Trust to address this issue.

What, however, has been the experience with the Water Trust? Unfortunately, the Trust thus far has not lived up to its potential. Some 24 years after the Trust was established, only three permanent water rights have been put into the Trust.

A more focused effort is needed to promote and facilitate dedication of water rights into the Trust. Over the long term, that probably requires increased incentives for putting rights into the Trust, including funds to purchase or lease rights from holders of existing water rights. In the short term, however, what is needed are more active efforts to publicize the existence of the Trust and encourage water right holders to put some or all of their right(s) into the Trust.

Texas Parks & Wildlife Department (TPWD) is a good fit to perform those functions. First, those activities mesh well with the agency’s mission: to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations. Second, TPWD has strong relationships with landowners across the state who may have water rights they would consider placing in the Trust if they are made aware of the Trust, the benefits for putting a water right into the Trust, and why it is important to do so for the things those landowners value.

HB 2225 gives TPWD direction and authority to perform those functions. TPWD has indicated that the agency is willing to play that role. Sierra Club supports HB 2225 for those reasons.