



# SIERRA CLUB

## LONE STAR CHAPTER

**The Lone Star Chapter of the Sierra Club supports SB 700, and recommends three additional changes**

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The Lone Star Chapter of the Sierra Club supports SB 700, the Texas Parks and Wildlife sunset bill and believes the agency should be continued for another 12 years.

We appreciate the hard work of the TPWD, its commissioners, Sunset staff, Senator Buckingham and Rep. Cyrier.

We are very supportive of the bill as filed, and are pleased with many management changes already being implemented by TPWD, including several suggested by the Sierra Club during the sunset process.

We are particularly supportive of the requirement that TPWD continue to work on its long-range land and water strategy, since we are well aware that TPWD must continue to invest in public lands and private land conservation as Texas's population continues to grow.

With a growing, diverse population, TPWD and Texas must plan for a future where all Texans have access to recreational, natural, hunting, fishing and hiking opportunities. We also must plan for our wildlife diversity and assure there are places unique species and habitats can grow and thrive, especially as a changing climate puts additional stresses on our unique species.

The Sierra Club does have three suggestions to improve the bill. We would note that two of these have been filed as separate pieces of legislation but we would be supportive of including them in the Sunset bill as it works through the process.

The Three Issues are described below and we hope Senate and House leaders will work to add these provisions to the bill if they do not pass as separate items.

### **1. Diversify funding for the Wildlife Diversity Program (non-game) so that it can better implement the Texas Conservation Action Plan**

The Wildlife Diversity Program (WDP) has been chronically underfunded. The WDP is the Wildlife Division program that specifically addresses the sustainability and habitat issues of non-game species - including plants. The number of game species is dwarfed by non-game species.

The WDP is charged with implementing the Texas Conservation Action Plan, which was formerly entitled as the Texas Comprehensive Wildlife Conservation Strategy 2005 - 2010 or Texas Wildlife Action Plan. Each state must complete such a plan. The highest priority is given to the Species of Greatest Conservation Need (SGCN).

There is a need to evaluate the level of funding that would be required to allow WDP to implement the Texas Conservation Action Plan and to compare that estimate to the funding supplied by existing sources. As part of the analysis, attention should be given to opportunities to diversify funding sources for the WDP. Possibilities include (a) setting up an ad hoc committee to explore funding options and (b) giving the interested public an opportunity to support the non-game wildlife program, much as interested hunter and fishermen support Wildlife Division's work to benefit the game species

### **2. Water Trust (HB 2225 (King of Uvalde))**

Statutorily assign the Texas Parks and Wildlife Department an active role in the Texas Water Trust by requiring the Department to encourage and facilitate the dedication of water rights for environmental needs to the Trust.

**Problem:** While the Texas Water Trust provides a valuable statutory tool to help the State protect environmental flows, a goal that fits squarely within TPWD's mission to manage and conserve Texas' natural resources, operational shortcomings have prevented it from becoming a widely-used mechanism.

#### **Background:**

- The Texas Water Trust was established in 1997 as part of Senate Bill 1, which also established the state's regional water planning process. The Trust was set up to hold surface water rights for the purpose of helping to protect environmental flows. It is part of the Texas Water Bank, which is overseen by the Texas Water Development Board (TWDB), created to serve as a sort of clearing house to facilitate water transactions as one means to help address future water shortages. Neither the Texas Water Bank nor the Trust has proven to be very effective as currently managed.

- After being in existence for 23 years, the Texas Water Trust currently holds only three water rights. The Texas Water Trust has not been very effective for multiple reasons, in particular because very few people even know it exists. Also, in the absence of an active water rights cancellation program there is little incentive for rights to be placed in the Trust. There could be a tax deduction for donation of water rights for placement in the Trust, particularly at the federal level as a deduction for income tax purposes, but the valuation of such rights is relatively complex, and tax law remains very unsettled on what it takes to qualify for a deduction.
- One significant factor in the lack of uptake of this tool is that TWDB does not publicize the existence of the Trust, solicit the donation of water rights, or help facilitate the placement of rights in the Trust. The Trust isn't a particularly good fit with that agency's mission. However, it is a good fit with the mission of the Texas Parks and Wildlife Department, and its role to manage and conserve the natural and cultural resources in of Texas. Environmental flows provisions in SB1 and SB3 were intended to identify mechanisms to allow for state-owned surface water flow, most of which has been authorized for diversion and use under perpetual permits, to be protected to support the habitat and wildlife needs of the State – which is TPWD's primary purpose.
- In its SER, TPWD noted the absence of a strong advocate for placement of rights in the Texas Water Trust as a constraint on its effectiveness in achieving its mission. Statutorily assigning TPWD an affirmative role in advocating for placement of water rights in the Trust could address this gap by aligning the Trust's environmental flows protection statutory goal with the state agency – TPWD – responsible for managing and conserving natural resources in Texas. Ideally, that role would come with funding to facilitate those transfers of rights, although this is out-of-scope for the Sunset process.

3. HB 2716/SB 1723 (King of Uvalde, Eckhardt) . **Restore the Texas Parks and Wildlife Department's authority to request and participate in hearings on applications for water rights or waste discharges.**

**Problem:** TPWD is responsible for managing and conserving Texas' natural resources; however, it no longer has the ability to be a party to state permitting actions that may adversely affect the State's natural resources.

**Background:**

- Until recently, TPWD was an active participant in contested case hearings on applications for water right permits and, less frequently, for waste discharge permits as necessary to protect the State's natural resources. However, in 2011, as part of the TCEQ Sunset bill, the Legislature adopted a House Floor Amendment that removed the ability of other state agencies, including TPWD, to request or participate in TCEQ hearings.
- The loss of the right to participate in hearings greatly reduced the ability of TPWD to provide expertise and perspective to fully achieve its mission, including permitting decisions that would adversely affect water quality or quantity (i.e. environmental

flows) and adversely impact the State's natural resources. This has affected TPWD's ability to fully discharge its statutory mission to protect and conserve the State's natural resources writ large, and also on state-owned assets that are managed for habitat, wildlife, and recreational purposes.

- The problems created by the loss of TPWD's right to participate in hearings were illustrated recently when a waste discharge permit was proposed from a new development adjacent to the pristine Honey Creek State Natural Area (SNA) which is located next to Guadalupe River State Park. The discharge, as proposed, would flow directly from the development onto the SNA and into spring-fed Honey Creek. Because of the 2011 amendment noted above, the Department did not have the ability to request a hearing to present evidence of potential adverse impacts and protect the property and resources on the property. By contrast, a private landowner would have that right. Fortunately, sufficient public pressure was brought to bear and it appears that an agreement has been reached to avoid the discharge. However, next time the state may not be so lucky.
- TPWD also noted, in its SER, the difficulties caused by the loss of its ability to obtain party status to protect state-owned resources under its care and management. When there is a contested-case hearing, only entities that are parties have the ability to present evidence, engage in discovery, cross-examine witnesses, and provide legal argument about what is required to comply with applicable law. Currently, TPWD is left on the outside, looking in, without the ability to advocate effectively for the protection of the resources it is charged with managing.