

## Resource Packet on HB 2716

**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.

**Solution:** [HB 2716](#) by Rep Tracy King.

**Action Needed:** The House Natural Resources Committee, chaired by Rep Tracy King, will convene on Tuesday, April 6<sup>th</sup> at 8:00am, and HB 2716 will be heard. There will be some in-person testimony, and supporters of the bill are encouraged to register in favor of and give comments online until the hearing is adjourned at <https://comments.house.texas.gov/home?c=c390>.

You may also email committee members directly –

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### Talking Points in Favor of the Bill:

- It is imperative to the mission of TPWD to be able to be an active participant to contested case hearings on applications for environmental permits, including water rights, in order to protect the State's natural resources.
- Texas has a rich cultural heritage in the outdoors, and TPWD's ability to steward state-owned assets for habitat and wildlife via the agency's participation in TCEQ hearings is an important way for TPWD to provide their unique expertise and perspective, helping to ensure Texans can pass on our natural heritage and customs to future generations.
- The potential granting of permits can impact the health of Texas' rivers and bays by causing changes to water quality and/or quantity and TPWD needs to be able to ensure permits protect them.
- Texas has approximately 191,000 miles of streams, 15 major river basins, eight coastal basins.
- Texas has seven major and five minor estuaries ranging from the nearly fresh Sabine Lake, which borders Louisiana, to the frequently hypersaline Laguna Madre along the southern coast. Although each estuary differs in size, hydrologic, and ecological characteristics, together they

support a diverse array of species which serve as the raw materials for a variety of economic activities associated with commercial and recreational fishing, hunting, and birding.

- TPWD manages 95 state parks, natural areas and historic sites that cover more than 630,000 acres, along with 50 wildlife management areas totaling 748,660 acres that could be adversely affected by permits issued without adequate protective provisions. TPWD needs to be able to protect the investment of Texans in these properties.

**Background:** Until recently, TPWD was active as a participant in selected 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 Texas Commission on Environmental Quality (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.

Example: 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 of that same property 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.

As additional context, the removal of TPWD's statutory party status was a legislative action during the TCEQ Sunset review; it was not examined or voted on as part of the Sunset Advisory Commission (SAC) process during that review. In fact, the decision was at odds with previous SAC provisions, adopted by the full Legislature, during the last TPWD Sunset review in 2009 that recognized TPWD's important role in providing comments on projects and permits, in addition to its right to participate in hearings, and required state agencies to respond to issues raised.

TPWD also noted, in its Self-Evaluation Report, 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. TCEQ must base its decision on evidence in the record of the hearing. 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.