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CLUB**

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Written Comments in Favor of HB 2716 by Chairman Tracy King – Prepared by Ken Kramer, Water Resources Chair, Lone Star Chapter of the Sierra Club for Submission to the House Natural Resources Committee on April 6, 2021

Sierra Club strongly supports HB 2716 by Chairman Tracy King. This legislation will restore the ability of Texas Parks & Wildlife Department to protect state property (such as state parks and wildlife management areas), and fish and wildlife resources the agency manages, from a proposed use of water or a permit to pollute that might negatively impact those properties or resources. TPWD had that authority for decades, but it was taken from the agency through a little understood amendment to the TCEQ “sunset” bill on the House floor in 2011.

Specifically, HB 2716 would allow TPWD to request or participate in a contested case hearing on a proposed water right or other TCEQ permit (such as a wastewater discharge permit) that “may adversely affect property or wildlife resources managed by the agency.”

The absurdity of not allowing TPWD this authority was demonstrated recently when a wastewater discharge permit was proposed for a new development adjacent to the pristine Honey Creek State Natural Area next to Guadalupe River State Park. The discharge, as proposed, would have flowed directly from the development onto the Natural Area and into spring-fed Honey Creek. Due to the 2011 legislative action, TPWD did not have the ability to request a hearing to present evidence of potential adverse impacts and protect the property and its resources. 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 that discharge. However, next time the outcome may be different.

KEEP IN MIND: *When we talk about property and fish & wildlife resources managed by TPWD, we are talking about the PUBLIC’s property and the PUBLIC’s fish & wildlife resources. TPWD is the steward of these public resources for all of us Texans. When TPWD is denied the right to protect these resources from proposed consumptive water uses or pollution permits, it is the public’s rights that are being denied and the public’s resources that are not being properly protected.*

Some interests have raised objections to restoring this authority to TPWD via HB 2716 because they do not want the agency to be able to contest any potential water right or pollution permit those interests might seek from TCEQ. Either they fear that TPWD's contest of a right/permit will result in denial or delay of that right/permit **OR** perhaps they simply do not want any close scrutiny of the possible impacts of that right/permit from an agency with expertise in fish and wildlife or land management. TPWD's involvement might require the applicant to undertake additional steps to address critical issues. **We understand the perspective of the applicant for a right/permit, BUT what is most important is the perspective and the right of the public to have their property and their fish and wildlife resources protected. TPWD is the public's agent to provide that protection.**

Some interests have raised the specter of TPWD contesting multiple water rights or TCEQ permits and tying up numerous proposed water rights or projects needing permits. TPWD's track record in contesting water rights or TCEQ permits when TPWD previously had the authority to do so prove that argument is false. **At the request of the Sierra Club, TPWD reviewed their record of participation in contested case proceedings over water rights and TCEQ permits – and the outcome of that participation – in the 25 years or more prior to the loss of that authority in 2011 and found the following:**

- a. TPWD participated in approximately 16 water rights hearings, plus an additional five hearings on iterations of the LCRA Water Management Plan.
- b. TPWD requested party status on wastewater discharge permits sparingly – at least four hearings on wastewater discharge permits: three or four shrimp farm cases in the 1990's and one on cage culture for fish in offshore waters.
- c. TPWD found that having a seat at the negotiating table was particularly beneficial. The knowledge that TPWD could request a hearing often led permittees in advance to negotiate settlements that reduced potential risks to fish and wildlife.
- d. TPWD's approach in all water rights hearings was to raise scientific and legal concerns and offer resolution of those concerns. TPWD neither supported nor sought denial of permits. The agency characterized any outstanding concerns as objections to certain conditions related to the permits. Regardless, no water right contested by TPWD resulted in a denial of that permit. Most resulted in some modification of the water right to address the concerns raised by TPWD.

Some interests have made the ludicrous claim that because TPWD's past involvement in water right or permit proceedings has not resulted in a denial of a right/permit, the agency's participation in contested matters has been ineffective. This convoluted argument ignores the bottom line: **TPWD authority to participate in contested case proceedings is to make sure that water rights or TCEQ permits protect property and/or fish & wildlife resources, not deny the issuance of those rights/permits. The public's property and resources deserve nothing less. The passage of HB 2716 will allow TPWD to perform that role once again.**

The Sierra Club urges swift approval of HB 2716.