

Editorial Memo (Time Sensitive)

From: **National Wildlife Federation and the Lone Star Chapter of the Sierra Club**

To: **News Editors**

Date: **April 28, 2021**

Subject: **Bill to Restore Texas Parks' Role in Protecting the State's Water, Fish, and Wildlife Resources Pending in House of Representatives**

Amid the myriad important (and not so important) issues the Texas Legislature is currently considering is a "sleeper" issue that has thus far not received attention from the news media or the general public. Lawmakers are debating whether or not to restore to the Texas Parks & Wildlife Department a key authority to protect public land, fish, and wildlife resources placed under its care. This memo explains the issue, the legislation (HB 2716) to address it, and the action needed to move HB 2716 forward.

Problem: Texas Parks & Wildlife Department is the state agency responsible for managing and conserving Texas' fish and wildlife resources and providing recreational opportunities for Texans and visitors through state parks and wildlife management areas. However, thanks to a single sentence buried in a legislative amendment on the Texas House floor in 2011, Parks & Wildlife Department has been prohibited for a decade from contesting permits issued by the Texas Commission on Environmental Quality (TCEQ) that might adversely affect Parks & Wildlife properties or the fish and wildlife the agency manages.

Solution: [HB 2716](#) by Rep Tracy King (D-Uvalde), Chairman, Natural Resources Committee. The bill was favorably reported from the Committee on April 22 (Earth Day) and is now in the House Calendars Committee, which sets the schedule for consideration of bills on the House floor. With only five weeks left in the legislative session, the bill needs quick House approval in order to be sent to the Texas Senate in time to pass.

Reasons for the Bill:

- In order to fulfill its mission, Parks & Wildlife needs to have the ability to be an active participant in administrative hearings that might adversely affect the properties and fish and wildlife resources the agency manages. This includes hearings contesting water rights that might adversely affect fish and wildlife through decreased instream flows or freshwater inflows to our state's coastal bays and estuaries.
- Parks & Wildlife participation in hearings on proposed TCEQ permits and water is an important way for the agency to provide its unique scientific expertise and stewardship perspective to the ultimate decision on whether to grant the permit or water right or – most likely – to put conditions on the permit or right to minimize or avoid adverse impacts on the resources managed by the agency, helping to ensure Texans can pass on our natural heritage and customs to future generations.

- The properties and the resources managed by Parks & Wildlife are important not only to the Texas environment but also to the state's hunting, angling, wildlife viewing, tourism, and recreational industries, a critical component of the Texas economic engine
- Those industries depend upon the health and well-being of the state's 191,000 miles of streams, 15 major river basins, eight coastal basins, seven major and five minor coastal estuaries, 95 state parks and natural areas, and 50 wildlife management areas. Parks & Wildlife has a key role to play in protecting all of these resources.

Background: For over 25 years Parks & Wildlife Department had the authority to participate in contested-case hearings on applications for water right permits and pollution discharge permits as necessary to protect the natural resources the agency manages. The agency exercised that authority judiciously. During that period Parks & Wildlife requested a contested case water rights hearing or party status in a hearing requested by others approximately 16 times. The agency requested party status in hearings contesting wastewater discharge permits only five times. No contested water right resulted in a denial. Most resulted in a modified water right to address Parks & Wildlife Department's concerns. Indeed, more so than participation in a contested case hearing, the fact that the agency had a seat at the negotiating table resulted in a better outcome. The knowledge that Parks & Wildlife could request a hearing often led permit applicants to negotiate settlements that reduced potential risks to fish and wildlife.

However, in 2011, as a result of one sentence buried in a much larger House floor amendment to a TCEQ bill, state agencies were prohibited from requesting or participating in a contested case hearing on any TCEQ permit matter. There was no real debate on that prohibition. Parks & Wildlife Department was allowed to continue participating in hearings to which it was already a party at the time but was prohibited from initiating any new such actions.

The problems created by the loss of the agency'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 (next to Guadalupe River State Park). The proposed discharge would have flowed directly into the Natural Area and into spring-fed Honey Creek. Parks & Wildlife Department did not have the ability to request a hearing to present evidence of potential adverse impacts on its property and resources. By contrast, a private landowner of that same property would have that right. Fortunately, sufficient public pressure was brought to bear and an agreement has been reached to avoid the discharge. However, next time may be different.

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, Parks & Wildlife Department is left on the outside, looking in, without the ability to advocate effectively for the protection of the resources it is charged with managing. HB 2716 would put Texas Parks & Wildlife Department back in a position to carry out its mission to protect its properties and the public's fish and wildlife resources.