

**From:** [Sunset Advisory Commission](#)  
**To:** [Elizabeth Jones](#)  
**Subject:** FW: SBCA recommendation for TCEQ Sunset: Pristine Streams Rule  
**Date:** Monday, June 27, 2022 4:00:22 PM  
**Attachments:** [SBCA - Pristine Streams Recommendation - TCEQ Sunset - 06.27.22.pdf](#)

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**From:** Brian Zabcik <brian@savebartoncreek.org>  
**Sent:** Monday, June 27, 2022 3:56 PM  
**To:** Lola Fender <Lola.Fender@senate.texas.gov>; Jennifer Jones <Jennifer.Jones@sunset.texas.gov>; Robert Romig <Robert.Romig@sunset.texas.gov>; Sunset Advisory Commission <Sunset.AdvisoryCommission@sunset.texas.gov>  
**Cc:** Sydney Garcia <sydney@savebartoncreek.org>; Clark Hancock > m>; Roy Waley >  
**Subject:** SBCA recommendation for TCEQ Sunset: Pristine Streams Rule

Ms. Fender, Ms. Jones, Mr. Romig —

Save Barton Creek Association would like to submit the attached comment letter for the consideration of Sunset commissioners in their review of the Texas Commission on Environmental Quality (TCEQ). Thank you for providing us with this opportunity

On behalf of SBCA,

— Brian Zabcik

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June 27, 2022

Ms. Jennifer Jones  
Mr. Robert Romig  
Sunset Advisory Commission  
P.O. Box 13066  
Austin, Texas 78711

Re: SBCA Comments on the Sunset Staff Report on the Texas Commission on Environmental Quality

Dear Ms. Jones and Mr. Romig:

Save Barton Creek Association (SBCA) appreciates the previous opportunities that we've had to provide comments to the Sunset staff for its review of the Texas Commission on Environmental Quality (TCEQ). SBCA submitted a detailed brief in December in which we explained the problems with TCEQ's continuing issuance of domestic wastewater discharge permits on the state's last remaining pristine streams. Barton Creek is one of those streams, as well as around 20 other streams in Texas, mostly located in the Hill Country. **We urged Sunset staff to include a recommendation for a rule that would end new wastewater discharge permits on our state's most pristine streams, while continuing to allow development with permits and authorizations for land application and beneficial reuse of treated wastewater.**

We understand that the Sunset staff received many suggestions for recommendations to include in its report on TCEQ. We also understand that the staff had to choose only a few recommendations to forward to Sunset commissioners. **While the staff was unable to include the pristine streams prohibition in its report, we hope that the commissioners will add it to the list of recommendations that they will send to the Legislature.**

We did note that the problem of water pollution from sewage discharge was included in the staff report, although obliquely. A box titled "2022 Wastewater Treatment Plant Example" appears at the bottom of page 17 of the staff. The text refers to "a recent contested case for a permit for a wastewater treatment plant," in order to describe the lack of clarity about which parties could be certified as affected parties. The text does not identify the wastewater treatment plant, but TCEQ has had only one pending contested case for a domestic wastewater discharge permit this year — the permit held since 2016 by the city of Liberty Hill, and currently up for renewal by TCEQ.

Liberty Hill's existing permit allows the city to discharge treated sewage with 0.5 milligrams per liter (mg/L) of total phosphorus into the South San Gabriel River. However, the level of naturally occurring phosphorus in the river is lower — much, much lower. A 2007 study by the U.S. Geological Survey (USGS) found that the level of naturally occurring phosphorus level in the river, immediately upstream from the outfall of Liberty Hill's treatment plant, was only 0.006 mg/ L. Sampling by the City of Austin's

Watershed Protection Department at a similar upstream location indicated that the phosphorus level could be as low as 0.003 mg/L.

The text box in the Sunset staff's report also doesn't say why affected parties are pursuing a contested case against Liberty Hill. The effect of discharging wastewater that may contain 83-167 times more phosphorus than what's naturally present in the South San Gabriel River has been disastrous. Since TCEQ approved Liberty Hill's current permit, the river has been regularly clogged with algae, often for more than three miles below the outfall. The algae has been persistent, preventing residents from swimming or fishing in the river. According to a statement by Stephanie Ryder Morris, one of the affected parties in the contested case, "The river is only cleared when heavy rains fill the river and wash the water and riverbed clean, such as the flooding in fall 2018. Once the rain stops, algae rapidly returns to the river."

Despite the lax pollutant limits in its permit, Liberty Hill has been unable to stay even within these requirements. Morris's request for a contested case hearing states that the city's worksheets and EPA ECHO data show that Liberty Hill exceeded its total phosphorus permit limits for at least 928 violation days from November 1, 2015 through June 30, 2020. The city also racked up multiple violation days for ammonia nitrogen, solids (TSS), oxygen demand (CBOD), and E. coli.

The most pristine streams in the Hill Country have the same characteristics as the South San Gabriel River — low to intermittent water volume, with extremely low levels of naturally occurring phosphorus, flowing through rocky channels with limited vegetation. Adding more phosphorus to streams like these is a recipe for out-of-control algae growths. Treated wastewater effluent contains many times more phosphorus than what's naturally present in these streams, and that's because phosphorus is a byproduct of the treatment process itself.

The pollution that treated sewage has already caused on the South San Gabriel and other Hill Country streams is why SBCA has opposed new discharge permits on the pristine streams in our mission area. Unfortunately, TCEQ has already approved two discharge permits on Onion Creek (Belterra in 2008 and Dripping Springs in 2019). The agency was also posed to approve another discharge permit on the Long Branch tributary of Barton Creek last year (an unrelated issue forced the developer to withdraw his application).

SBCA also knows that this isn't just a problem for the pristine streams in our own backyard. Our organization is part of the No Dumping Sewage coalition, which was formed in 2015 to advocate for better wastewater policies throughout the Hill Country. Several of our coalition partners have had to contend with discharge permit applications on their local pristine streams, including the Honey Creek tributary of the Guadalupe River and the LoneHollow Creek tributary of the Sabinal River. In both of those instances, the applicants ultimately decided to withdraw their discharge permit applications. If they hadn't, there is nothing in TCEQ's rules and standards that would have prevented it from issuing permits to them. Indeed, TCEQ's rules seem to obligate the agency to approve any discharge permit application that it receives.

Based on our own experiences and those of our partner groups, SBCA has drawn the following conclusions about TCEQ's rules and standards for wastewater discharge permits. It appears that the Commission:

- will not reject any discharge permit application on any stream, no matter how pristine it might be;

- will issue a draft discharge permit for any application received;
- will likely approve any permit once drafted; and
- will not correct problems in any permit once issued.

**The point that SBCA wishes to make is simply this: TCEQ's existing rules will not protect pristine streams. Less than 1% of all classified stream segments in Texas can still be called truly pristine. If the Sunset Commission does not want this to drop to 0%, it must recommend that TCEQ be directed to adopt a new rule to protect these streams. As proposed, the Pristine Streams rule would end TCEQ's issuance of new domestic wastewater discharge permits on all classified stream segments in the state with naturally occurring levels of phosphorus below 0.06 mg/L, as recorded in the agency's own database of surface water quality testing data.**

The Pristine Streams rule has already been vetted by the Legislature and TCEQ. A version of the rule was included in H.B. 4146 (T. King) in last year's session. The bill was reported out of the House Environmental Regulation Committee on a 7-0 vote, and was passed by the full House on an 82-61 vote. The proposal was also included in a rulemaking petition filed with TCEQ earlier this year. Commissioner Janecka voted to accept the petition, and while Chairman Niermann and Commissioner Lindley voted against it, they agreed in their remarks from the dais that the state's last remaining pristine streams deserve a higher level of protection.

For all of these reasons, Save Barton Creek Association respectfully urges the members of the Sunset Commission to recommend to the Legislature that TCEQ should end the issuance of new domestic wastewater discharge permits on all classified stream segments with levels of naturally occurring phosphorus below 0.06 mg/L. The last remaining pristine streams in Texas are a finite resource. Once they're gone, there will be no more.

Clark Hancock, board president  
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