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Ms. Danielle Nasr
Project Manager, Sunset Advisory Commission
Attn: TPWD
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Texas Sunset Advisory Commission
P.O. Box 13066
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Sent via Sunset Commission portal and e-mail

Dear Ms. Nasr and Chairman Cyrier,

On behalf of the Lone Star Chapter of the Sierra Club, we are submitting these comments on the Review of the Texas Parks and Wildlife Department (Review) prepared by the Sunset Commission Staff. The Lone Star Chapter appreciated the opportunity to meet with Sunset staff, both in person and by conference call, to discuss our comments and recommendations as enumerated in our January 24, 2020 letter to the Sunset Advisory Commission.

First of all, while we strongly support the mission of TPWD and have confidence in its leadership, the review by the Sunset Commission provides a unique opportunity for the Department to do a top to bottom review of its operations and seek feedback from the public on possible improvements. Thus, we are supportive of the continuation of the TPWD for another 12 years. We also agree that the agency's activities to protect Texas' natural resources and provide outdoor recreation opportunities continue to be needed. With Texas' population continuing to grow, and expected to hit 47 Million by 2050, this work is paramount. As we have seen during our present COVID-19 crisis, providing outdoor recreation opportunities is more important than ever.

However, we do note that a number of our major concerns were not addressed in the Review. These include transparency in structuring TPWD advisory committees, adequacy of staffing, funding to open never-opened state parks, flexibility of funding to expand boundaries of existing state parks and wildlife management areas, the chronic underfunding of the TPWD Wildlife Diversity Program, control of invasive aquatic species and terrestrial plant species, inadequacy of adequate predator population data, the need for interagency cooperation, the need to increase TPWD's participation in TCEQ permitting, expanding its role in the Texas Water Trust, and agency response to climate change.

On Page 5 of the Review, it is noted that in order to accomplish its mission "TPWD conducts a broad variety of activities", followed by a list of seven major activities. It would have been most appropriate for the Review to have discussed TPWD's success in performing all those activities, since the primary purpose of the Sunset Review should include how well the subject agency is meeting its mission. However, the Review only addressed three of the listed activities: (1) Managing and regulating fishing, and boating activities; (2) Enforcing game and wildlife laws; and (3) Registering and titling boats.

The Review did not evaluate or make recommendations regarding TPWD's performance for crucial activities listed as: (1) Operating and managing a system of public lands including state parks, fish hatcheries, and wildlife management areas; (2) Managing the sustainability of wildlife, fish, and other aquatic species; (3) Monitoring, conserving, and enhancing the quality of public and private lands, waters, and other aquatic habitats; and (4) Conducting education and outreach events and programs.

A number of the Lone Star Chapter's major concerns that were **not** addressed by the Review would reasonably be categorized under the TPWD activities that the Review also did not evaluate.

As detailed in the Chapter's letter of January 24, 2020, we believe that consideration of these key items relates directly to the ability of TPWD to carry out its mission. These are integral issues in the evaluation and formulation of constructive recommendations.

ADMINISTRATIVE

1. Ensure that there is an online opportunity to submit public comments for every Commission action item requiring a vote

There should be a standard Operation Procedure during the on-line posting of Commission agenda to allow a link where the public can comment on every ACTION agenda item. This is especially important in the age of COVID-19 when in-person Commission meetings are not being held. (Note: There has been an improvement lately in this process.)

2. Lack of transparency with advisory committees' structures, composition with respect to stakeholder representation, and proceedings

On Page 11 of the Review, the Sunset Staff notes that the "ATB's [across-the-board provisions] reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government." This item of concern is related to openness. There are numerous advisory committees that serve as sounding boards for the State Parks and Wildlife Divisions. The committees provide another opportunity for volunteers to assist TPWD and for TPWD to gather input from the public.

The members of each committee must be approved by the Commission. However, there is no easily available public listing of the names of the advisory committees, the committee members, or the entities that the members represent. Likewise, the meeting dates and the minutes of the committee meetings are not readily available, although an interested person can personally request to be notified of the meeting dates and request a copy of the minutes. Although the advisory committee concept is valuable and the input is important, the entire arrangement lacks transparency regarding structure, composition and proceedings. It would be appropriate for the Sunset Commission make recommendations to improve transparency.

STAFFING

3. The adequacy of staffing for the Wildlife Diversity Program, state park planning staff, and staff at state park locations should be evaluated.

The Lone Star Chapter is particularly concerned about professional staffing levels in the Wildlife Diversity Program of the Wildlife Division. Current staffing is too low to meet the needs of implementing the Texas Wildlife Action Plan, particularly the species identified as the Species of Greatest Conservation Need (SGCN). For example, there is one mammologist for the entire state and one invertebrate zoologist in the Wildlife Diversity Program. There is one botanist for the entire state.

Planning for unopened state parks, such as Davis Hill SNA, has lagged because of inadequate TPWD state park planning staff. The public has requested that planning begin for Davis Hill SNA for years, but it has never been done.

Visitation is growing as as an increasing number of people make demands upon the state park system, but state park system staffing is lagging. Volunteers are crucial, not only for the hours of labor that they supply, but also for the support links to the community. However, there is an over-reliance on volunteers. Parks should be fully staffed.

RESPONSIBILITY FOR STATE ASSETS

4. Quality of habitat management of TPWD sites transferred to the Texas Historical Commission

During the 86th Texas Legislative session, HB 1422 mandated that management of six historic sites be transferred from TPWD to the Texas Historical Commission (THC) as a consequence of the THC's Sunset Advisory Commission report. The LSC objected strenuously to the transfer of three of the sites -- San Jacinto Battleground, Monument Hill, and Washington-on-the-Brazos -- due to significant natural habitat within park boundaries. Our objections were rooted in the lack of adequately trained personnel with experience in habitat management and an agency culture and mission completely lacking an interest in habitat management or restoration. The LSC has concerns about the quality of the THC's habitat management, particularly of the San Jacinto Battleground.

Furthermore, in 2006, management of seventeen state historic sites was transferred from TPWD to THC. Since this is the time for examination of adequacy and appropriateness of management by TPWD, the adequacy of habitat management of the natural assets transferred in 2006 to the THC should also be reviewed.

The question is whether the best interests of the public assets are being served by THC's current management.

PLANNING AND FUNDING ADEQUACY FOR STATE PARKS AND WILDLIFE

5. Examine the issues of the never-opened state parks and natural areas. For example, the Davis Hill SNA in East Texas has never been opened in over 35 years.

What is required to open state parks and natural areas that have **never** opened to the public. A lack of state park planning staff has been a hindrance to opening these public assets, but the problem would not end with the hiring of adequate planning staff. The current practice is to request a large appropriation to fund construction necessary to open a single named state park, while others lie fallow. Davis Hill SNA in southeast Texas is a prime example. For over 35 years, no progress has been made in furthering the accessibility of this important SNA to the general public, even on a limited basis. Volunteers have worked to control invasive plant species and assurances have been given that planning will begin so the park can open. Yet there has been no planning and no action. Much the same can be said for the Chinati Mountains and the Big Satan Unit of Devils River SNA.

6. Study gaps in the need for new state parks across Texas and provide funding

The Review **does** acknowledge the increasing demand by the public to enjoy state park resources. The Chapter appreciates that the Review states this plainly. The Sunset Staff's recommendation that the Land and Water Plan focus on land and water resources and meeting the statutory requirement of the Plan should satisfy this concern.

In addition to this overall requirement, we urge you to include in your recommendations that TPWD develop a long-range plan to acquire and develop new state parks and protected areas to meet the needs of Texas' booming population and protect threatened wildlife habitats. We also think it is imperative that TPWD be directed to assure that all Texans - whatever their age, socioeconomic status, gender or ethnic background -- have access to parks and other Texas public lands. The TPWD should be directed to assure that all Texans have equal access and are encouraged to take advantage of these opportunities. In particular, Texas's relatively young population means outreach to new audiences and potential users are of utmost importance.

Thus the corollary to the study is to provide acquisition funding, either by appropriation or by bonding authority. This would require a recommendation that the legislature consistently appropriate funds for acquisition of new parkland.

7. A budget item or budget flexibility is needed to expand the boundaries of existing state parks and wildlife management areas (WMAs) as the opportunity arises.

This item is related to Comment #10 above, in that it would expand available public land (for both state parks and WMAs), but distinct in that it is aimed specifically **only at existing** state parks and WMAs. Expansion of existing state parks and WMAs is the most cost-effective means of adding additional acreage for recreation and habitat to the state inventory. Generally, there is minimal planning; basic development and staffing is already in place. Either a specific budget item aimed at expansion of existing state parks or WMAs **or** legislative rider authorizing flexibility to utilize appropriated funds for the same purpose could allow TPWD to take advantage of such acquisition opportunities when they arise. Note that the funds could be used to acquire property in fee or to purchase a conservation easement. The intent of this rider would be permissive authority for TPWD to use only if the opportunities present themselves. An example of such a rider is as follows:

In the event that suitable lands become available for acquisition to expand existing state parks or Wildlife management areas, Texas Parks and Wildlife Department may transfer an amount not to exceed \$2,000,000 over the 202x-2x biennium from Strategy A.1.1. Wildlife Conservation and/or Strategy B.1.1. State Park Operations to Strategy D.1.2. Land Acquisition. In the event lands are identified for acquisition, the capital budget is adjusted accordingly and only in the amounts necessary to complete the acquisition.

8. 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

LOCAL PARKS GRANTS

9. Is local grant program funding keeping up with inflation over the years? Grant programs should be balanced with respect to recipient and purpose.

Local parks grant funding is the most important point of intersection between municipalities and TPWD. In the past, such funding has experienced severe swings. However, local parks grant funding has **not** recognized inflationary effects. During the 81st legislative session, the Legislature appropriated \$31.0 million over the biennium, but was thereafter reduced because of budget shortfall. Subsequent appropriations have increased, but have not accounted for inflation.

It is important to maintain a balance in recipients between small communities and large metropolitan areas. Especially in urban areas, there is a need for green spaces; which can be supported by balancing active recreation and nature appreciation purposed grants. There are specialized grant categories for recreational needs. Likewise, specific grants should benefit urban nature habitat acquisition or restoration. Generally, there should be a balance between active recreation and nature appreciation in the availability of local parks grants **and** the scoring of grant applications.

INVASIVE SPECIES CONTROL

10. Is there an adequate financial support to control invasive aquatic species?

During the 84th legislative session, a concerted effort was made by TPWD to alert the Legislature about the impacts of invasive species – but in the aquatic environment only. Specific information was given on threats by animal species (e.g., zebra mussels) and plant species (e.g., salvinia). The requested funding of \$18 million was supported by detail identifying vulnerable locations and proposed expenditures. In response, the Legislature appropriated significantly more funds to control aquatic invasive species that it had ever done before (\$5.1 million). There is a need to identify the level of financial support to adequately control invasive aquatic species, while recognizing control of any invasive species is **not** a one-time appropriation. Control of invasive species is a long-term management issue requiring consistent financing that is adjusted for appropriate inflation.

11. A program to control invasive plant species in Texas state parks and Wildlife Management Areas (WMAs) and the role of volunteers

TPWD has specifically targeted the problem of aquatic invasive species. However, there is not a plan that addresses the invasive plant problem as an issue across all state parks and WMAs. There is a need for a plan identifying invasive plant species at each state park and WMA, defining their locations, estimating their numbers, and setting up a prioritized management plan for their control. The level of long-term financial support required to implement the plans should be estimated, recognizing that the control of any invasive species is not a one-time appropriation.

Volunteers could be a major source of assistance in implementing invasive species control at state parks and WMAs. For example, local Master Naturalists or "Friends" groups could be part of teams working at specific state parks or WMAs.

WILDLIFE MANAGEMENT AND PROTECTION

12. Lack of predator data and predator hunting

There is a severe lack of predator population data and predator hunting data, which precludes formulating a knowledgeable plan for predator management in Texas. Predator hunts in various Texas locales promote unlimited take (i.e., killing) of multiple predator species and unregulated species without TPWD having any knowledge of the effects such events are having upon the sustainability of the target species. The proliferation of predator hunts and the lack of management plans for predator species (e.g., mountain lions, bobcats, foxes) could precipitate negative ecosystem dynamics if unregulated predator hunting affects species sustainability.

There is also the issue of incidental take of non-target species, such as black bear, which is fostered by the current state of trapping regulations. The population of black bears in West Texas is a state-listed endangered species.

There is a need for evaluation of the adequacy of predator population data and the adequacy of hunting and trapping regulations to sustain predator populations.

- 13.** Address adequacy of compensation policies regarding O&G leasing and ROW for pipelines, high-voltage lines, and wind turbines with respect to wildlife and habitat protection on TPWD public lands

The proliferation of oil and gas pipelines and affiliated transport facilities is increasingly affecting Texas' public lands, particularly the Wildlife Management Areas (WMAs). The right-of-way (ROW) corridors have both short-term impacts during construction and long-term impacts during operation upon habitat and wildlife. Impacts can include actual taking of land, disturbance of habitat, introduction of invasive species into disturbed area, wildlife disturbance, and wildlife mortality.

There should be a matching of impacts to compensation and mitigation. A simple one-time payment for the taking of ROW does not address issues of open-ended wildlife mortality and long-term expenses to control invasive species. Long-term impacts require long-term solutions instead of a single compensation payment. Alternative compensation should be considered to mitigate for long-term impacts, such as assistance with monitoring, restoration, or retrofitting infrastructure.

INTERAGENCY COOPERATION

- 14.** There are opportunities for interagency cooperation that would benefit the management of state natural resources.

The benefits of TPWD having an active role in commenting in the permitting processes of actions before the TCEQ and RRC should be evaluated.

Likewise, wildlife protection could be increased through cooperation with the Texas Department of Transportation to formulate protocols for wildlife protection in the design and construction of transportation projects.

Wildlife protection should be an integral part of road design, especially with respect to providing safe corridors for wildlife passage and minimizing wildlife mortality. Transportation corridors can be insurmountable barriers to the movement of wildlife, leading to fragmented and isolated wildlife populations. A recent example is multiple instances of high mortality of brown pelicans at the Gayman Bridge at State Highway 48.

CLIMATE CHANGE AND SUSTAINABILITY

- 15.** How is TPWD addressing the issue of climate change and sustainability across its operations?

We can expect increasing incidences of damage to facilities and habitat from wildfire and flooding as a result of climate change. Climate change damage and sustainability planning for facilities is necessary to minimize damage. For example, after repeated storm damage to Galveston Island State Park, TPWD is moving the campsites to a more protected location. Planning for all state public lands should an evaluation of the vulnerabilities of structures and natural resources to climate change.

PUTTING TRUST BACK IN THE WATER TRUST - EXPAND TPWD ROLE IN WATER TRUST

16. 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. Instead, the TPWD should be given explicit authority to recommend the placement of water rights into the Water Trust.

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: one at Spring Lake on the San Marcos River and two on the Rio Grande downstream of Presidio. The San Marcos River right is in the Trust because of Andy Sansom's leadership in working with Texas State University to donate the right. The two Rio Grande rights are in the Trust because the Rio Grande Watermaster was pushing for cancellation of water rights on the Rio Grande that had long gone unused and the Texas Parks and Wildlife Department stepped up to facilitate placement of the rights in the Trust. Water rights are protected from cancellation when they are in the Trust, and they can be put in the Trust permanently, as is true for each of the three rights currently in the Trust, or for a defined term of years.

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 cancellation program—the Rio Grande Watermaster cancellation effort referenced above has not been replicated elsewhere in the state since a statewide process was initiated in the late 1960s and there is no indication that it will be—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.

Water-right holders do pay some limited annual fees to TCEQ, which can be avoided by placement of the rights in the Trust. For example, in 2019, a small water right on Cibolo Creek in Wilson County was voluntarily abandoned by the holder of the water right, apparently in response to overdue fees. The owner might well have been open to placing the right in the Trust if he had been aware of that option.

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.

17. ALLOW TPWD PARTY STATUS IN STATE PERMITTING ACTIONS

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. Those powers and responsibilities should be returned to the TPWD.

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.

Example of Challenge Related to TPWD Party Status in TCEQ Hearings:

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.

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 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. (See issue #2, 2009 TPWD review.)

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.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to submit these comments and concerns about the Sunset Staff Review of the Texas Parks and Wildlife Department. We would be pleased to discuss them further.

Sincerely,

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